



## Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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### **FINAL MINUTES FOR REGULAR SESSION MEETING** **Held at 9:00 a.m. on April 14, 2004, and 8:00 a.m. on April 15, 2004** **9535 E. Doubletree Ranch Road • Scottsdale, Arizona**

#### ***Board Members***

Edward J. Schwager, M.D., Chair  
Sharon B. Megdal, Ph.D., Vice Chair  
Robert P. Goldfarb, M.D., Secretary  
Patrick N. Connell, M.D.  
Ronnie R. Cox, Ph.D.  
Ingrid E. Haas, M.D.  
Tim B. Hunter, M.D.  
Becky Jordan  
Ram R. Krishna, M.D.  
Douglas D. Lee, M.D.  
William R. Martin III, M.D.  
Dona Pardo, Ph.D., R.N.

#### ***Board Counsel***

Christine Cassetta, Assistant Attorney General

#### ***Staff***

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director  
Barbara Kane, Assistant Director / Investigations & Quality Assurance  
Beatriz Garcia Stamps, M.D., M.B.A., Board Medical Director  
Gary Oglesby, Chief Information Officer  
Tina Speight, Public Affairs Coordinator  
Lisa McGrane, Legal and Communications Coordinator

**WEDNESDAY, APRIL 14, 2004**

#### **CALL TO ORDER**

Edward J. Schwager, M.D., Chair, called the meeting to order at 9:05 a.m.

#### **ROLL CALL**

The following Board members were present: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

#### **CALL TO THE PUBLIC**

Statements issued during the call to the public appear beneath the case referenced.

#### **NON-TIME SPECIFIC ITEMS**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN          | LIC. # | BOARD RESOLUTION                           |
|-----|-------------|----------------------------------|--------|--|
| 2.  | MD-03-0846B | J.T. CULLEY K. CHRISTENSEN, M.D. | 8464   | Uphold the Executive Director's dismissal. |
| 3.  | MD-03-0596A | N.V. MATTHEW S. KEENE, M.D.      | 23083  | Uphold the Executive Director's dismissal. |

**NON-TIME SPECIFIC ITEMS (Continued)**

**MOTION:** Robert P. Goldfarb, M.D. moved to uphold the Executive Director's dismissal of cases 2 and 3.

**SECONDED:** Ram Krishna, M.D.

**VOTE:** 10-yay, 0-nay, 1-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                         | LIC. # | BOARD RESOLUTION |
|-----|-------------|-------------------------|-------------------------|--------|------------------|
| 4.  | MD-02-0705A | D.O.                    | THOMAS H. WAREING, M.D. | 22417  | Dismissed.       |

**MOTION:** Ram Krishna, M.D. moved to dismiss this case.

**SECONDED:** Tim B. Hunter, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.                   | COMPLAINANT v PHYSICIAN |   | LIC. #        | BOARD RESOLUTION                           |
|-----|----------------------------|-------------------------|---|---------------|--|
| 8.  | MD-03-1011A<br>MD-03-1011B | E.D.                    | GERALD F. SCHWARTZBERG, M.D.<br>JEFFREY D. ISAACS, M.D. | 5243<br>12959 | Uphold the Executive Director's dismissal. |

E.D. made a statement to the Board at the call to the public. He stated that Dr. Isaacs was his wife's physician. He went to visit his wife twice daily and found that she had difficulty breathing. He also stated that Dr. Schwartzberg forced him to sign a statement agreeing not to revive his wife if something were to happen. Per his request, his wife's death was investigated through the hospital. E.D. was informed that Dr. Schwartzberg no longer had privileges at the hospital.

Patrick Connell, M.D. stated that this case was appropriately dismissed.

**MOTION:** Patrick Connell, M.D. moved to uphold the Executive Director's dismissal

**SECONDED:** Ram Krishna, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                      | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|----------------------|--------|---|
| 7.  | MD-03-1099A | K.S.                    | JODY B. REISER, M.D. | 21445  | Overturn the Executive Director's dismissal and continue the investigation. |

K.S. made a statement to the Board at the call to the public. K.S. explained that she was temporarily paralyzed off and on since 1993. She also had severe problems with seizures.

A.S. made a statement to the Board at the call to the public. A.S. pointed out that the order for his wife's blood work reflected another physician's name other than Dr. Reiser. The hospital later corrected the error. K.S. stated that Dr. Reiser told them he was nuts and his wife was co-dependent.

Edward J. Schwager, M.D. stated that it is not clear the patient was referred to the Barrow Neurological Institute by the third visit. The physician's medical records indicate a referral for pain management. He questioned the symptomatology, if the diagnosis and referral were consistent with the patient's lesion. Dr. Schwager stated that he would like clarification regarding this matter and the documentation of the patient's records. He also asked whether the neurologist should have established the findings due to the seemingly significant problem in the patient's neck. Robert P. Goldfarb, M.D. stated that the patient undoubtedly had a cervical disk herniation, but there is not enough information to conclude this case. Philip Scheerer, M.D., Board Medical Consultant, stated that the original diagnosis was a cervical fracture. The patient thought there was a fracture, but it did not show up on any test. The patient was then referred to the Barrow Neurological Institute for another opinion. Roderic Huber, M.D., Board Medical Consultant, clarified that the appeal of the Executive Director's dismissal of this case was centered on falsification of records and poor communication. Dr. Schwager stated additional investigation is needed to determine if the standard of care was met. The allegation involved a fracture, but the records indicate a cervical lesion. Also, the patient's complaints were not addressed.

**MOTION:** Ram Krishna, M.D. moved to overturn the Executive Director's dismissal and continue the investigation.

**SECONDED:** Patrick Connell, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

**NON-TIME SPECIFIC ITEMS (Continued)**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                        | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|------------------------|--------|---|
| 6.  | MD-03-0460A | A.F.                    | JOSEPH P. AIELLO, M.D. | 15612  | Overturn the Executive Director's dismissal and return the matter to the Board for consideration of an advisory letter. |

Edward Schwager, M.D. stated it appeared the patient contacted the physician's office to acquire information, yet there was no follow-up by the physician. There is not enough evidence to support disciplinary action, but Dr. Schwager suggested an advisory letter might be appropriate. Tim B. Hunter, M.D. stated that it appeared the physician did not instruct the patient to return for a follow-up visit. Dr. Hunter would support the advisory letter.

**MOTION: Sharon Megdal, Ph.D. moved to overturn the Executive Director's dismissal and return the matter to the Board for consideration of an advisory letter.**

**SECONDED: Tim B. Hunter, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                    | LIC. # | BOARD RESOLUTION                           |
|-----|-------------|-------------------------|--------------------|--------|--|
| 5.  | MD-03-0613A | M.S.                    | GLEN R. BAIR, M.D. | 8968   | Uphold the Executive Director's dismissal. |

The Board members expressed concern over the process that Board staff used to investigate this case. Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, stated that it appears this case should have been administratively closed, but he will look into the matter. Edward J. Schwager, M.D. informed the Board that this would be discussed later in the meeting.

Sharon B. Megdal, Ph.D. and William R. Martin III, M.D. were not present when this matter was concluded in the afternoon. Dr. Cassidy stated that this case came to the Board as a professional conduct case. An Osteopathic Doctor (D.O.) filed a complaint about a Medical Doctor (M.D.) making references to patients that D.O.'s are not as good as M.D.'s. There was no statutory basis for the charge and the case was dismissed. When the Board received the appeal, it then referenced a patient who did have a quality of care issue in the original complaint. Patrick N. Connell, M.D. stated that the name of the patient was in the original complaint. Dr. Connell stated that there seemed to be some rush to judgment regarding this case. Ram R. Krishna, M.D. stated that there was no professional conduct or quality of care. Edward J. Schwager, M.D. and Tim B. Hunter, M.D. agreed with Dr. Connell. Dr. Krishna said there was no statute violated. Robert P. Goldfarb, M.D. stated that if the patient was looking at various forms of treatment, a physician has a duty to inform the patient what he thinks, but this is not something the Board should adjudicate. Dr. Hunter stated that the Board should review the validity of all cases. Dr. Cassidy asked that the Board look at the letter from complainant.

**MOTION: Ram Krishna, M.D. moved to uphold the Executive Director's dismissal.**

**SECONDED: Tim B. Hunter, M.D.**

**VOTE: 9-yay, 0-nay, 0-abstain/recuse, 3-absent**

**MOTION PASSED.**

**FORMAL INTERVIEWS**

| NO. | CASE NO.   | COMPLAINANT v PHYSICIAN |                  | LIC. # | BOARD RESOLUTION  |
|-----|------------|-------------------------|------------------|--------|---|
| 1.  | MD-00-0333 | L.J.                    | HARA MISRA, M.D. | 14933  | Advisory Letter for failure to have clear documentation of the detailed vascular examination prior to surgery and the pre-operative discussions with the patient regarding this procedure. A.R.S. § 32-1401(3)(a) While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee, and A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. |

Ram Krishna, M.D. recused himself from this case. Hara Misra, M.D. appeared before the Board with his attorney Stephen Myers.

Edward Schwager, M.D. commented that the materials provided by Board staff included previous transcripts and minutes regarding this case. It was later determined that these materials should not have been provided to the Board members and were removed from further materials distributed. Dr. Schwager asked the Board members individually if they would be able to adjudicate this case without bias. Dona Pardo, Ph.D., R.N. commented that she would not be able to provide an unbiased opinion. The remaining Board members indicated this would not be a problem. Dr. Schwager gave Dr. Misra and Mr. Myers the option of a formal hearing or proceeding with the formal interview today. Mr. Myers stated that this would be the place to resolve this matter and commended the Board for being so upfront about the transcript of the former interview being provided to them.

## **FORMAL INTERVIEWS (Continued) - HARA MISRA, M.D.**

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are for inappropriate venous surgery leaving the patient with extensive scarring of the right leg and difficulty in obtaining office records. The patient was concerned about cosmetic results, but that concern was not noted in the patient's medical records.

Dr. Misra made a statement to the Board. An examination revealed extensive secondary varicose veins of the right leg and calf. When this was revealed, a Doppler test was performed on both legs. Also, an examination was performed in a standing position at the groin level, thigh, and calf in order to observe the reflux. The tests reported normal function. He also stated that after testing, the patient had no pain. Dr. Misra stated that he did not fall below the standard of care by not removing the greater saphenous vein.

Edward Schwager, M.D., presenting Board member, began the questioning of Dr. Misra. Dr. Schwager reiterated that the issues are if an adequate evaluation of the greater saphenous vein was performed and the issue of the cosmetic result. Dr. Schwager referred to the documented vascular tests performed in May of 1999. Dr. Schwager stated that in Dr. Misra's opening statement he revealed that he did observe the patient's reflux, yet that specific finding was not documented. Dr. Misra explained that the conclusion of his report said no defect of the valvular system of the deeper veins. He also explained what is normally included in his reports. Each valve is not listed on the report of the Doppler test, because there are several of them. Nor does he note if they are competent or not competent. He does note the major areas of the vein and if they are defected.

Dr. Schwager asked Dr. Kennell if it was more likely that the greater saphenous vein was competent and if that determination should have been made. Dr. Kennell explained what is expected to be included in the average report. A comment would be made about the greater and lesser saphenous systems in a varicose vein evaluation. The report generated by Dr. Misra specifically says "in the deep system", but the veins in question are more superficial veins. The comments in Dr. Misra's report have to do with the presence of a deep clot in the system. Dr. Kennell also stated that the report further elaborated "there is no evidence of any deep vein thrombosis or gross valvular damage in the deeper system." The report in question does not have information related to the system that was operated on. Dr. Schwager clarified with Dr. Kennell that the greater saphenous vein is not in the deeper vein system. Tim B. Hunter, M.D. questioned Dr. Kennell if the procedure performed relieved the varicosities from the patient's original complaint. Dr. Kennell explained that unless you take care of the main source, the varicosities would recur over time. Dr. Kennell stated that a short-term fix was done in this case and this is generally considered below the standard of care. Dr. Kennell stated that the only evidence the greater saphenous vein was incompetent was a test performed by Dr. Soldo, after the patient obtained a second opinion. Dr. Hunter confirmed with Dr. Misra that he found no incompetence of the greater saphenous vein. Dr. Hunter clarified with Dr. Kennell that if the greater saphenous vein were competent this would have been within the standard of care.

Dr. Schwager commented that the patient seemed surprised at the number of incisions that would be necessary prior to the surgery, but proceeded anyway. Dr. Schwager questioned Dr. Misra why were the incisions were not performed along more natural skin lines using less limited incisions and other techniques. Dr. Misra stated that the veins were secondary veins that required many incisions for this particular patient with this type of condition. Dr. Misra stated that he did discuss the multiple incisions needed with the patient prior to the surgery. Dr. Misra stated that he would not do the surgery unless the patient agreed to proceed.

Dr. Hunter asked Dr. Misra if a similar patient were to approach him wanting the same procedure performed, would he change anything. Dr. Misra stated that he now diagrams the patient's veins and mentions scarring prior to surgery and not after. Dr. Hunter commented that the complaint of the patient was that she wanted to know what to do with the scars after surgery. Dr. Misra stated that he informed her to not be in the sun. Also, plastic surgery would be a possibility. Dr. Goldfarb referred to the Outside Medical Consultant's report noting that the surgery performed was below the standard of care as described and provided to him. Dr. Kennell stated that there almost had to be an incompetence of the greater saphenous vein and leaving the vein would be below the standard of care.

Mr. Myers made a statement to the Board on behalf of Dr. Misra. Mr. Myers reiterated that in May of 2002 the Board imposed probation for one year with additional continuing medical education (CME). Dr. Misra completed the CME imposed. The procedure that Dr. Misra performed on this patient was for the treatment of intense pain. The Outside Medical Consultant reported that the patient most likely should have had a stripping of the greater saphenous vein, but did not give any evidence or reasons to support this conclusion. Mr. Meyers noted that in a previous presentation to the Board, Larry Monte, a previous Senior Investigator, stated that the patient's discomfort decreased as time passed. Dr. Soldo also supported this.

Dr. Schwager stated that the question is if there was incompetence in the greater saphenous vein. Dr. Schwager stated that there is no preponderance of evidence that the procedure was performed below the standard of care. Also, there was mitigation by the significant CME obtained by Dr. Misra imposed by the Board. Dr. Schwager recommended that the Board support an advisory letter for failure to have clear documentation of the detailed vascular examination prior to surgery and the pre-operative discussions with the patient regarding this procedure. A.R.S. § 32-1401(3)(a) While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee, and A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit

## FORMAL INTERVIEWS (Continued) - HARA MISRA, M.D.

to warrant disciplinary action. Christine Cassetta, Board Counsel, confirmed that both statutes could be used. William Martin III, M.D. stated that although there is merit to the motion, he would support dismissal due to the time factor involved with this case. Also, Dr. Misra has already completed much of the discipline imposed by the Board. Sharon B. Megdal, Ph.D. would support an advisory letter because of Dr. Misra's response to Dr. Hunter's questions that asked if he would change anything, which shows that there were deficiencies.

**MOTION:** Edward Schwager, M.D. moved to issue an advisory letter for failure to have clear documentation of the detailed vascular examination prior to surgery and the pre-operative discussions with the patient regarding this procedure. A.R.S. § 32-1401(3)(a) While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee, and A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

**SECONDED:** Robert P. Goldfarb, M.D.

**ROLL CALL VOTE** was taken and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., and Edward J. Schwager, M.D. The following Board member was recused from voting: Ram R. Krishna, M.D. The following Board members abstained from the vote: William R. Martin III, M.D. and Dona Pardo, Ph.D., R.N. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 8-yay, 0-nay, 3-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                          | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|--------------------------|--------|--|
| 2.  | MD-03-0462A | AMB                     | BRIAN S. LINDSTROM, M.D. | 27142  | Advisory Letter for incomplete diagnosis of ectopic pregnancy and subsequent treatment. The physician counseled the patient and the patient agreed to the choice of therapy. The physician has made changes to his practice. A.R.S. § 32-1401(3)(a) While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee. |

Brian S. Lindstrom, M.D. appeared before the Board with his attorney Barry A. MacBan.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Lindstrom was negligent in his diagnosis of an ectopic pregnancy and his use of methotrexate, which subjected the fetus to potential harm resulting in the patient obtaining an elective termination of pregnancy.

Dr. Lindstrom made a statement to the Board. Dr. Lindstrom stated that the patient did not have any clinical signs of an ectopic pregnancy. The patient had two days of spotting and mild cramping. Dr. Lindstrom stated that his interpretation would be that if a patient does have contraindications, then methotrexate would be appropriate. This patient would still be a candidate even if she did not have any contraindications because she met other criteria. Dr. Lindstrom also commented that when there is no evidence of an intrauterine pregnancy, you must assume the pregnancy is elsewhere.

Ingrid E. Haas, M.D., presenting Board member, began the questioning of Dr. Lindstrom. Dr. Haas asked Dr. Lindstrom for clarification regarding the patient's last menstrual period and specifically regarding the gestational age noted on July 1, 2001 with the letters SAB (spontaneous abortion) next to it. Dr. Lindstrom stated that the patient informed the nurse that she had a miscarriage in July of 2001 and her last menstrual period was unknown. The ultrasound report indicated a sliver of fluid and an ovarian cyst. Dr. Lindstrom confirmed for Dr. Haas that there was no evidence of an adnexal mass. Dr. Haas pointed out the quantitative human chorionic gonadotropin (HCG) level had also increased. Dr. Haas asked Dr. Lindstrom why he did not consider performing another ultrasound in view of the HCG level. Dr. Lindstrom stated that at that time, he felt comfortable this was not an intrauterine pregnancy. Dr. Lindstrom stated that he did entertain surgery, but elected not to perform surgery because of patient's work schedule. The patient also expressed her desire to avoid surgery. Dr. Lindstrom stated that he gave her both options, surgery or methotrexate. One week after the administration of methotrexate the patient's HCG doubled and Dr. Lindstrom stated that occurred because the methotrexate failed with the first administration. Dr. Haas asked Dr. Lindstrom to review with her what the effects of methotrexate are to a fetus. Dr. Lindstrom stated that there can be skeletal and cranial facial abnormalities and that he believed he did discuss these effects with the patient. Dr. Haas stated that she did not see that conversation noted anywhere. Tim B. Hunter, M.D. asked if there would have been a risk to the patient with the ectopic pregnancy, even though the ultrasound did not show an obvious intrauterine pregnancy or a mass in the adnexal area of the uterine. Also, since the main risk is a rupture. Dr. Lindstrom stated that ectopic pregnancies do not show up on an ultrasound tests. They can also deteriorate quickly, which is why Dr. Lindstrom tried to resolve the situation in a timely manner. Dr. Haas confirmed with Dr. Hunter that an option would have been to wait and see what happened, along with counseling the patient. Dr. Lindstrom informed the Board that the ultrasound

## **FORMAL INTERVIEWS (Continued) - BRIAN S. LINDSTROM, M.D.**

was performed because of the patient's last menstrual period was unknown. He also stated that he used methotrexate because of the patient's reluctance to have surgery. Dr. Lindstrom stated the ultrasound gave him inadequate or inaccurate information.

Dr. Barricks stated that a strip of fluid in an ultrasound could indicate a miscarriage. Dr. Barricks also stated that the basic concern was that the use of methotrexate was premature and exceeded the acceptable standards. The rise of the HCG levels of this patient was consistent with a normal pregnancy.

Mr. MacBan made a statement to the Board on behalf of Dr. Lindstrom. He stated that it is not clear to him that there was evidence of an ectopic pregnancy. The HCG levels along with the strip of fluid, shown in the ultrasound, could have indicated a miscarriage in the process. The use of methotrexate was appropriate. Also, the American College Guidelines (ACOG) indicated that an additional dose of methotrexate might be given if HCG levels increase as occurred with this patient.

Dr. Barricks responded to the bulletin referred to by Mr. MacBan. He stated that to determine candidates would include measuring the size of the ectopic mass, if ruptured, and the desire for future fertility. With that in mind, there was no proof of an ectopic pregnancy with this patient.

Dr. Haas stated that diagnosing and ruling out an ectopic pregnancy is difficult. She stated that physicians need to proceed with caution because an ectopic pregnancy can be life threatening. She stated that the consequences of administering methotrexate should have been weighed more carefully because of the harm it can cause to an intrauterine pregnancy. Although, she questioned if this would rise to the level of discipline due to the fact that Dr. Lindstrom did take steps to help the patient. Dr. Schwager commented that the issue is failing to request or diagnose an ectopic pregnancy before medically treating with methotrexate, causing harm to the patient with the loss of a fetus. Dr. Haas recommended issuing Dr. Lindstrom an advisory letter based on the fact that he did counsel the patient. Also, the patient did accept responsibility for her choice of therapy and this needs to be weighed in the Board's decision. Dr. Schwager stated that there is insufficient evidence for disciplinary action, but Dr. Lindstrom has made steps to change how he evaluates possible ectopic pregnancies.

**MOTION: Ingrid E. Haas, M.D. moved to issue an advisory letter for incomplete diagnosis of ectopic pregnancy and subsequent treatment. The physician counseled the patient and the patient agreed to the choice of therapy. The physician has made changes to his practice. A.R.S. § 32-1401(3)(a) While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.**

**SECONDED: Becky Jordan**

**ROLL CALL VOTE was taken and the following Board members voted in favor of the motion: Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram Krishna, M.D., William Martin III, M.D., Sharon Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward Schwager, M.D. The following Board members voted against the motion: Patrick Connell, M.D. and Douglas D. Lee, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 9-yay, 2-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

## **NON-TIME SPECIFIC ITEMS (Continued)**

### **Executive Director's Report**

#### **2004 Legislative Session Update**

Tina Wilcox, Legislative Liaison, stated that House Bill 2025 was heard in the Senate Health Committee last Thursday. An amendment was made by Senator Allen, but failed to pass the Committee. Senator Allen suggested that Dr. Cassidy work with the Arizona Medical Association (ArMA) for language acceptable for both parties. Ms. Wilcox noted that Senator Allen and ArMA had already approved the language and the Board could not change the language. If the Board approves of this language, the bill will return the Senate Health Committee for approval. Sharon Megdal, Ph.D. voiced opposition that wording could not be changed at this point. Dr. Megdal noted that the Board was not attempting to change the intent of the language, but wanted to change the verbiage so that the amendment was a proper fit with the statute's current language. She also stated that it is the Board's prerogative to instruct the Executive Director not the Legislature's.

**MOTION: Robert P. Goldfarb, M.D. moved to accept the wording as proposed.**

**SECONDED: Patrick Connell, M.D.**

**VOTE: 10-yay, 0-nay, 1-abstain/recuse, 1-absent**

**MOTION PASSED.**

## FORMAL HEARING MATTERS

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|--------|--|
| 1.  | M-03-0413A  | AMB                     | 15513  | Letter of Reprimand for unprofessional conduct in violation of A.R.S. § 32-1401(26)(r); have a female chaperone present at any time and in all work settings where he is with a female patient and document her presence in the patient charts; the Board's Summary Restriction remain in effect until the effective date of the final entered Order in this matter. |
|     | MD-03-0743A | M.A.                    |        | Dismissed.   |

Stephen Wolf, Assistant Attorney General presented the matter and suggested the Board specify a length of time for the probation. The State suggested that a two-year time frame would be appropriate. Mr. Wolf stated that he did receive a response from attorney Scot J. Hergenroether.

Mr. Hergenroether made a statement to the Board on behalf of Dr. Ridge. Mr. Hergenroether stated that in October of 2003 this matter was sent to formal hearing. He stated that the Administrative Law Judge (ALJ) found M.A.'s allegations not credible. Mr. Hergenroether stated that Michael P. Ridge, M.D. request that the Board reject the following ALJ's recommended findings of fact:

- Number 13 - which requires a female chaperone for "all examinations"
- Number 98 - which requires a female chaperone for literally "all examinations", including visual examinations. He stated that a visual examination would be to observe and does not require a chaperone.
- Number 17 - pertaining to patient C.C. This appears to be a violation of the Board's order, but Dr. Ridge's nurse testified that she was present during the examination.
- Number 19 - because S.H. did not have an exam, but was only observed.
- Number 23 - regarding the June 21, 2002 visit because no examination occurred, only observed.
- Number 99

Mr. Hergenroether stated that none of the above findings of fact are justified for disciplinary action. Dr. Ridge has gone through several audits and only one record was not in compliance. Mr. Hergenroether stated that in summary there is no basis for a letter of reprimand or a practice restriction.

Dr. Ridge made a statement to the Board. He stated since 1998, he has had a criminal trial with the risk of jail, has paid out of his own money to defend himself, and had a one day notice for a meeting to possibly suspend his license. Dr. Ridge stated that a restriction on his license would create an enormous problem with his ability to see his patient's.

Mr. Wolf stated that the Board's original order was quite explicit. It was Dr. Ridge who took it upon himself to decide that he did not need a chaperone for the visual examination a patient. The ALJ heard all of the evidence and made a fair decision based on the substantial evidence. The amendments that Dr. Ridge is seeking are to clear him and dismiss this case by asking to reject the findings of fact requested.

Dr. Megdal stated that the Board must take actions to protect the public. The Board's Order still allowed Dr. Ridge to practice after the October 2003 Summary Action meeting. Dr. Megdal also stated that the physician's reply that he determines himself what is an examination and Mr. Hergenroether's explanation were disingenuous. Dr. Megdal stated that the question before the Board is whether the previous order was violated. Dr. Megdal would support accepting the findings of fact as recommended by the Administrative Law Judge with the grammatical corrections to the following findings of fact:

- Number 1 – change "Arizona Board of Medical Examiners" to "Arizona Medical Board."
- Number 19 – add the word "examination" at the end of the sentence.
- Number 21 – add the letter "a" between the words "on" and the "June 19, 2002."
- Number 32 – delete the letter "a" in the phrase "MA presented a prescription bottles"

**MOTION: Sharon Megdal, Ph.D. moved to adopt the findings of fact as recommended by the Administrative Law Judge with the grammatical corrections as stated above.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

**MOTION: Sharon Megdal, Ph.D. moved to adopt the conclusions of law as recommended by the Administrative Law Judge.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

## FORMAL HEARING MATTERS (Continued) - MICHAEL P. RIDGE, M.D.

Dr. Hunter stated that Dr. Ridge should receive a letter or reprimand, but not probation, and the Board should terminate the previous Probationary Order.

**MOTION:** Tim B. Hunter, M.D. moved to terminate the Board Order dated May 21, 1998 and October 2003 and adopt the Order as recommended by the Administrative Law Judge regarding case number MD-03-0413A to issue a letter of reprimand for violating a Board Order, without probation; adopt the Order as recommended by the Administrative Law Judge to dismiss case number MD-03-0743A.

**SECONDED:** Ram Krishna, M.D.

**ROLL CALL VOTE** was taken and the following Board members voted in favor of the motion: Patrick Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram Krishna, M.D., Douglas D. Lee, M.D., William Martin III, M.D., Sharon Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

## FORMAL INTERVIEWS (Continued)

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                        | LIC. # | BOARD RESOLUTION |
|-----|-------------|-------------------------|------------------------|--------|------------------|
| 3.  | MD-02-0761A | AMB                     | PAUL D. MCKERNAN, M.D. | 17534  | Dismissed.       |
|     | MD-02-0761B |                         | RALPH GUALTIERI, M.D.  | 20407  | Dismissed.       |

William Martin III, M.D. recused himself from this case. Paul D. McKernan, M.D. appeared before the Board with his attorney Duane A. Olson. Ralph Gualtieri, M.D. appeared before the Board with his attorney Winn Sammons.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. Case number MD-02-0761A - The allegation is that Dr. McKernan failed to request general anesthesia intraoperatively when it became clear that the spinal anesthetic was insufficient for the pain experienced by the patient during a cesarean section. Case number MD-02-0761B – The allegation is that Dr. Gualtieri improperly administered anesthesia to a patient for a cesarean section and failure to place the patient under general anesthesia intraoperatively when it became clear that the spinal anesthetic was inadequate for the pain experienced by the patient.

Dr. McKernan made a statement to the Board - MD-02-0761A. He stated that the patient presented in active labor five to six hours prior to the scheduled Cesarean Section (C-Section). Upon entering the facility he was informed of the urgent situation. The patient underwent a spinal anesthetic and things looked good. Later the patient was not numb, but did not want to go to sleep. Dr. McKernan asked Ralph Gualtieri, M.D. to perform another spinal. A local was decided upon, and the patient was pain free. He stated that during the procedure the patient did yell out in pain, but the baby was delivered within one minute and the patient was then given an immediate shot of anesthesia after the baby was born.

Ralph Gualtieri, M.D. made a statement to the Board - MD-02-0761B. Dr. Gualtieri stated that the patient was uncomfortable during the deeper parts of the C-Section. At the time of delivery the patient felt pressure and did ask to be put out, which Dr. Gualtieri did and the patient's pleas were not ignored. Dr. Gualtieri stated that the patient's body mass index was 36.7 and was obese. Dr. Gualtieri addressed the issues of his documentation of this patient's care. The safest care was taken with this patient's care and her wishes were not ignored.

Ingrid E. Haas, M.D., presenting Board member, began the questioning of Dr. McKernan - MD-02-0761A. Dr. McKernan stated that his associate was paged, but was unavailable. The nurses contacted him because they were concerned about the patient. Dr. McKernan stated that he was the primary physician and his associate was the assistant. S.B. informed Dr. McKernan that she had had a previous vertical incision and her previous physician informed her that she would never be able to deliver vaginally. Dr. McKernan stated that he did not obtain these records from her previous physician to verify this information. Dr. McKernan's concern was that the baby be delivered safely. Dr. Haas questioned his operative report that stated the spinal was present with relatively good effects and asked if that was adequate for a C-Section. Dr. McKernan stated that he proceeded to give a local because it was adequate. Dr. Haas questioned why Dr. McKernan did a pinch test but the patient did not feel anything until the peritoneum. Dr. McKernan stated that the patient felt no pain with the initial incision. Dr. Haas asked if Dr. McKernan considered stopping the procedure and do a general anesthetic. He responded by stating that the patient did have excellent muscle relaxation. Douglas D. Lee, M.D. asked when Dr. McKernan entered the peritoneum if he considered irrigating the peritoneum with lidocaine. Dr. McKernan stated that did not and that he also felt that it would be too risky to wait to deliver the patient's baby. Dr. McKernan offered the patient general anesthesia due to the ineffective spinal and that a general anesthesia was not considered safe at that point. Dr. Haas stated that the patient's original incision from a previous C-Section was a transverse incision and not a vertical, removing the emergency with this situation. Dr. McKernan stated that the previous physician's note of a transverse incision was a mistake. Tim B. Hunter, M.D. asked how long the patient was experiencing pain. Dr. McKernan responded by stating that it was 30-60 seconds. Dr. Schwager questioned the discrepancy of the time frame that the pain was felt. Dr. McKernan stated that the patient felt sparks, but this feeling subsided when he stopped using the electrocautery. Ram Krishna, M.D. asked if

## **FORMAL INTERVIEWS (Continued) - PAUL D. MCKERNAN, M.D. & RALPH GUALTIERI, M.D.**

Dr. Gualtieri recommended putting the patient to sleep after the pinch test and after the second spinal. Dr. McKernan stated that he could not recommend a general anesthesia at that time due to certain circumstances.

Dr. Haas, presenting Board member, began the questioning of Dr. Gualtieri - MD-02-0761B. Dr. Haas stated that there was a note that said the patient was not a good candidate for a general anesthesia. Dr. Gualtieri stated that obesity was a factor by body mass index. With morbid obesity and a class one airway Dr. Lee asked why Dr. Gualtieri was reluctant for general anesthesia. Dr. Gualtieri's concern was not to administer general anesthesia because of the risk of a failed intubation. Dr. Krishna commented that the nurse's deposition stated that if the second spinal did not work, the patient would be put to sleep under a general anesthetic. Dr. Gualtieri stated that his impression was that they would proceed if the spinal were sufficient.

Duane A. Olson made a statement to the Board on behalf of Dr. McKernan – MD-02-0761A. He stated that there is an entry regarding Dr. McKernan's discussion with the patient regarding vertical incision. Also, the patient's deposition supports the conversation with her previous physician of a vertical incision. The main issue was failing to request general anesthesia when the complaint of pain was made. The patient stated in her deposition that she did not feel pain prior to Dr. McKernan's incision. Mr. Olson stated that the patient informed the nurse that she felt sparks, but they ended when the pain began.

Winn Sammons made a statement to the Board on behalf of Dr. Gualtieri – MD-02-0761B. Mr. Sammons referred to a policy at Banner Thunderbird pertaining to "Efforts to reduce pain experienced by patients under going a C-Section." The policy says that patients will begin to be taught more about what they might feel during a C-Section, which would be done during prenatal classes and continued by the nurse at the bedside. Also, patients would be instructed to say stop if they feel overwhelmed. He stated that patients might feel pain, which is why there is a policy. The physician also takes the status of the fetus into consideration during a C-Section. Mr. Sammons urged the Board to dismiss this case.

Dr. Haas recommended a finding of unprofessional conduct in violation of A.R.S. § 32-1401(26) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

**MOTION: Ingrid E. Haas, M.D. moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(26) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.**  
**MOTION FAILED due to lack of a second.**

Dr. Krishna stated that he could not find fault with Dr. McKernan, the surgeon, because even under oath the patient was under the impression she had a vertical incision previously.

**MOTION: Ram Krishna, M.D. moved to dismiss case number MD-02-0761A – Dr. McKernan.**

**SECONDED: Tim B. Hunter, M.D.**

**ROLL CALL VOTE WAS TAKEN and the following Board members voted in favor of the motion: Patrick Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram Krishna, M.D., Douglas D. Lee, M.D., Sharon Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward Schwager, M.D. The following Board member voted against the motion: Ingrid E. Haas, M.D. The following Board member was recused from the motion: William Martin III, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 9-yay, 1-nay, 1-abstain/recuse, 1-absent**

Dr. Lee commented that one of the decisions Dr. McKernan and Dr. Gualtieri had to make involved a patient's desire to be awake, which the patient did express. The patient could have been made more comfortable, but realistically, this was 30 to 60 seconds before the baby was delivered and the patient was made comfortable quickly after. The correct decision was made to proceed for a good delivery. The issues with the spinal were more technical.

**MOTION: Douglas D. Lee, M.D. moved to dismiss case number MD-02-0761B – Dr. Gualtieri.**

**SECONDED: Robert P. Goldfarb, M.D.**

**ROLL CALL VOTE WAS TAKEN and the following Board members voted in favor of the motion: Patrick Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Douglas D. Lee, M.D., Dona Pardo, Ph.D., R.N., and Edward Schwager, M.D. The following Board members voted against the motion: Ingrid E. Haas, M.D., and Ram Krishna, M.D. The following Board member abstained from the motion: Sharon Megdal, Ph.D. The following Board member was recused from the motion: William Martin III, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 7-yay, 2-nay, 2-abstain/recuse, 1-absent**

**MOTION PASSED.**

## FORMAL INTERVIEWS (Continued)

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                                 | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|---------------------------------|--------|--|
| 4.  | MD-03-0050A | I.P.                    | PADMAVATHI S. VEERAPANENI, M.D. | 28740  | Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for negligently administering Heparin to a patient already over-anticoagulated without assessment of the patient's clinical status. |

Sharon Megdal, Ph.D. was not present when this matter was considered. Padmavathi S. Veerapaneni, M.D. appeared before the Board with her attorney Paul A. Conant.

Roderic Huber, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Veerapaneni negligently ordered Heparin for a patient with a specific order that no anticoagulation medication be administered. The patient suffered a cerebral hemorrhage and expired.

Dr. Veerapaneni made a statement to the Board. She stated that she came on call at approximately 5 p.m. The nurse, who questioned her about anticoagulation, had paged her. She was informed that her colleague had thoroughly examined the patient. The patient had not been on any anticoagulation for three weeks. The nurse told her that the patient was upset and asked everyone to leave his room. She asked the nurse to start the patient on Heparin and instructed the nurse to call her with the lab results as soon as they get in. She ordered Tylenol for the patient. The nurse clarified that the patient's pain was generalized. She received a call around 4 a.m. the next morning that the patient had been vomiting. Dr. Veerapaneni stated that she then ordered a computed tomography (CT) scan that revealed a bilateral deep-seated interior cerebral hemorrhage. The patient was transferred to the intensive care unit (ICU), but the patient expired because of the Heparin. She stated that she went by the protocol and was left with no choice but to begin the Heparin.

Patrick Connell, M.D., presenting Board member, began the questioning of Dr. Veerapaneni. Dr. Connell verified with Dr. Veerapaneni that the patient came to the emergency department before midnight. Dr. Connell also confirmed that the emergency department physician's dictation of that visit was in the patient's chart in addition to lab results. Dr. Connell asked if Dr. Veerapaneni had access to that chart when she received the call at 5:30 p.m. the following afternoon. Dr. Veerapaneni stated that the dictation would not be in the chart but a handwritten note would be. Dr. Connell asked Dr. Veerapaneni whose responsibility it would be to order Heparin for a patient, as Heparin is a very serious intervention. Dr. Veerapaneni stated that it is the physician's responsibility. Dr. Connell asked why Dr. Veerapaneni ordered antibiotics. Dr. Veerapaneni informed him that she was concerned about the patient's fever. Dr. Veerapaneni agreed that it was her obligation to get the lab results, but in this situation she felt that because Dr. Stewart evaluated the patient she took his word for it. Dr. Connell discussed the deposition of the nurse who stated that the patient had a severe headache and Dr. Veerapaneni prescribed Demerol. Dr. Veerapaneni stated that in this case the situation was different due to a long flight and the patient had been sick for some time.

Tim B. Hunter, M.D. confirmed with Dr. Veerapaneni that she is a hospitalist. Dr. Veerapaneni informed the Board that she was working for a hospitalist company at the time this situation arose. Dr. Veerapaneni stated that covering 60-75 patients at a time is not unusual. Dr. Hunter also verified with her that she was on call at two hospitals. Dr. Veerapaneni now insists that she is kept informed about all patients. Douglas D. Lee, M.D. asked how Dr. Veerapaneni managed the patient's refusal for blood to be drawn but was able to administer Heparin. Dr. Veerapaneni stated that the patient was upset because he had soiled himself. She was hoping that the blood would be drawn once he was cleaned up. Dr. Veerapaneni stated that it normally takes about two-three hours for the pharmacy to send the Heparin up to be administered to the patients. She was hoping that the lab work would be done first because of the normal delay with the pharmacy. Dr. Krishna asked Dr. Veerapaneni to explain the role of a hospitalist. Dr. Veerapaneni stated that she admits the patients through the emergency department in the daytime and cares for them until 5 p.m. She clarified that she is "on call" for 60-75 patients and cares for 18-20 patients at a time. Dr. Veerapaneni ensures the patients are safe. Dr. Veerapaneni said that the nurse informed her that the patient was experiencing pain, but did not specify a headache. Dr. Veerapaneni stated that she would still follow the same procedure if a similar patient were to present at a hospital because the benefits of Heparin are far greater than the risks.

Mr. Conant made a statement to the Board on behalf of Dr. Veerapaneni. This case is going to superior court. Dr. Veerapaneni was employed with Inpatient Consultants (IPC). Mr. Conant stated that Dr. Veerapaneni informed the Board in her opening statement that she took certain things on faith. Mr. Conant stated that Dr. Stewart had seen this patient, who was admitted to the emergency department in the morning and that afternoon he diagnosed the patient with pancreatitis. He said that the patient was not admitted with chest pain. Dr. Veerapaneni must rely on what the nurse is saying over the phone. If the nurse had knowledge of the patient's condition, she should have informed Dr. Veerapaneni, but she did not. Dr. Veerapaneni did follow the protocol on record. Mr. Conant stated that it would be important for the Board to have an opportunity to review the deposition because the nurse changes her story several times.

Dr. Huber stated that administering Heparin is serious and a careful physician would not administer Heparin without assessing the information. Dr. Veerapaneni would have been able to make an accurate assessment of the situation if she would have gone to the hospital to review the chart. The lab work was at the hospital as well as a written history from two physicians.

## **FORMAL INTERVIEWS (Continued) - PADMAVATHI S. VEERAPANENI, M.D.**

Dr. Connell stated that this is a complex internal medicine patient and the information was right there on the initial emergency department sheet. Dr. Connell said that this was an unsafe practice setting by caring for 75 patients at a time and being on call for two hospitals. The nurse seemed to have an impaired understanding of what was happening with the patient. Dr. Connell recommended a finding of unprofessional conduct under A.R.S. § 32-1401(26) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, and (II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient. Dr. Connell stated that the standard of care is that the physician should become familiar with a patient's case in order to make an informed decision as to whether or not to order and administer anticoagulation therapy. This attributed to the patient's death.

Dr. Hunter stated that there was very poor service on the part of the nursing staff and finds it very difficult to find fault with this physician, but yet a patient died. Dr. Schwager stated that he would support unprofessional conduct and discipline. Donna Pardo, Ph.D., R.N. would like the Nursing Board to look into this matter as there were quite serious errors on nurse's behalf. Also, she would support the motion, because the physician should have followed up more closely with this patient.

**MOTION: Patrick Connell, M.D. moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(26) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, and (II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient. Dr. Connell stated that the standard of care is that the physician become familiar with a patient's case in order to make an informed decision as to whether or not to order anticoagulation and attributed to the patient's death.**

**SECONDED: William Martin III, M.D.**

**VOTE: 9-yay, 1-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

Patrick Connell, M.D. recommended issuing Dr. Veerapaneni a letter of reprimand because there were a number of strategies that could have been used to avoid the outcome. There were red flags that appeared but the physician's thinking was fuzzy.

**MOTION: Patrick Connell, M.D. moved for Board staff to draft findings of fact, conclusions of law and order for a letter of reprimand for negligently administering Heparin to a patient already over-coagulated without assessment of the patient's clinical status.**

**SECONDED: Robert P. Goldfarb, M.D.**

**ROLL CALL VOTE WAS TAKEN and the following Board members voted in favor of the motion: Patrick Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Becky Jordan, Ram Krishna, M.D., Douglas D. Lee, M.D., William Martin III, M.D., Dona Pardo, Ph.D., R.N., and Edward Schwager, M.D. The following Board member voted against the motion: Tim B. Hunter, M.D. The following Board member was absent when this matter was considered: Sharon Megdal, Ph.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 9-yay, 1-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

**MOTION: Ram Krishna, M.D. moved to refer the nurses involved in this case to the Nursing Board.**

**SECONDED: Patrick Connell, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

## **NON-TIME SPECIFIC ITEMS (Continued)**

### **Executive Director's Report**

#### **Proposed MAP Rules**

Sharon Megdal, Ph.D. and William Martin III, M.D. were not present when this matter was considered. Tina Wilcox, Legislative Liaison, reviewed the issue of the proposed Monitored Aftercare Program (MAP) rules with the Board. She asked the Board to review and approve the draft MAP rules. Christine Cassetta, Board Counsel, stated to the Board that the intention was to codify the Board's practice into rule. She noted that the definition of self-report is slightly different than the Board's past practice. In the past self-report was considered if the physician initiated contact with the Board. Currently it is considered a self-report only if a physician has a self-realization that he/she needs help, not if a physician contacts the Board because of a Driving Under the Influence (DUI) or a hospital intervention. Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, reiterated that if the Board receives a police report and the physician calls the day before the Board received that report, it should not be considered a self-report. Tim B. Hunter, M.D. asked for clarification in the situation that the Board receives notice a week after a physician supposedly initializes a self-report. Ms. Cassetta stated that there is a clause in the stipulation rehabilitation agreements (SRA) that would allow the SRA to be rescinded and reconsidered if that situation were to arise. Patrick Connell, M.D. stated if a physician with two relapses does not agree to surrender his license the Board shall revoke the license. He also suggested that "two relapses" should be

**NON-TIME SPECIFIC ITEMS (Continued) – Proposed MAP Rules**

defined and under what circumstances. Ms. Cassetta informed Dr. Connell that is referencing another statute. Ms. Cassetta stated that she and Ms. Wilcox could work out language for Dr. Connell's concerns.

**MOTION: Patrick Connell, M.D. moved to accept the proposed MAP Rules.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 9-yay, 0-nay, 0-abstain/recuse, 3-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION                           |
|-----|-------------|-------------------------|---------------------------|--------|--|
| 1.  | MD-03-0620A | J.E.                    | WILLIAM B. IGNATOFF, M.D. | 28729  | Uphold the Executive Director's dismissal. |

Sharon B. Megdal, Ph.D. was not present when this matter was considered. Edward J. Schwager, M.D. questioned the process on this case. He stated that the appeal was received because the original complaint was not investigated. Patrick N. Connell, M.D. stated that it appeared it was opened and then dismissed. This was ultimately appropriately dismissed, but there is concern about the process.

**MOTION: Patrick Connell, M.D. moved to uphold the Executive Director's dismissal.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                      | LIC. # | BOARD RESOLUTION                           |
|-----|-------------|-------------------------|----------------------|--------|--|
| 9.  | MD-03-0879B | B.E.                    | RAYMOND TAETLE, M.D. | 20032  | Uphold the Executive Director's dismissal. |

Tim B. Hunter, M.D. recused himself from this case. Sharon B. Megdal, Ph.D. was not present when this matter was considered. Raymond Taetle, M.D. made a statement to the Board at the call to the public. Dr. Taetle stated that he always tries to inform patients of complications.

**MOTION: Patrick Connell, M.D. moved to uphold the Executive Director's dismissal.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 9-yay, 0-nay, 1-abstain/recuse, 2-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                         | LIC. # | BOARD RESOLUTION                           |
|-----|-------------|-------------------------|-------------------------|--------|--|
| 10. | MD-03-0141A | S.T.                    | CAROL L. HENRICKS, M.D. | 25445  | Uphold the Executive Director's dismissal. |

Sharon B. Megdal, Ph.D. was not present when this matter was considered.

**MOTION: Ram Krishna, M.D. moved to uphold the Executive Director's dismissal.**

**SECONDED: Patrick Connell, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION                                     |
|-----|-------------|-------------------------|---------------------------|--------|--|
| 11. | MD-04-L021A | L.I.                    | BASSAM M. EL-KHOURI, M.D. | N/A    | Uphold the Executive Director's denial of licensure. |

Sharon B. Megdal, Ph.D. was not present when this matter was considered. Ram Krishna, M.D. stated that the Staff Investigational Review Committee's (SIRC) recommendation indicated the denial was due to allegations of destroying medical records and lapses in clinical judgment. He stated based on those allegations he would support upholding the Executive Director's denial of licensure. Dr. Schwager stated that there was a bad outcome and the physician went to great lengths to hide that fact. Dr. Connell stated that this was not an isolated event and would agree with Dr. Krishna.

**MOTION: Ram Krishna, M.D. moved to uphold the Executive Director's denial of licensure.**

**SECONDED: Patrick Connell, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

**NON-TIME SPECIFIC ITEMS (Continued)**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                   | LIC. # | BOARD RESOLUTION                                     |
|-----|-------------|-------------------------|-------------------|--------|--|
| 12. | MD-04-L013A | L.I.                    | PETER LAPIS, M.D. | N/A    | Uphold the Executive Director's denial of licensure. |

Sharon B. Megdal, Ph.D. was not present when this matter was considered. Patrick N. Connell, M.D. stated that he sees no evidence that this physician is in recovery. Also, the physician does not meet the Monitored Aftercare Program (MAP) standards in Arizona.

**MOTION: Patrick Connell, M.D. moved to uphold the Executive Director's denial of licensure.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|---------------------------|--------|--|
| 13. | MD-04-L007A | L.I.                    | PAUL M. LITTLE, JR., M.D. | N/A    | Offer the physician a probationary license with Monitored Aftercare Program (MAP) terms. |

Paul M. Little, Jr., M.D., made a statement to the Board at the call to the public. Dr. Little stated that he is a physician in recovery. He was addicted to prescription pain medication. He informed the Board that he has been clean for three years and 11 months.

Sharon B. Megdal, Ph.D. was not present when this matter was considered. Patrick N. Connell, M.D. stated that Michael Sucher, M.D., Monitored Aftercare Program Consultant, believes Dr. Little is recovering and would support issuing Dr. Little a probationary license with Monitored Aftercare Program (MAP) terms.

**MOTION: Patrick Connell, M.D. moved to offer the physician a Probationary license with MAP terms.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                          | LIC. # | BOARD RESOLUTION |
|-----|-------------|-------------------------|--------------------------|--------|------------------|
| 14. | MD-03-L152A | L.I.                    | BRIAN D. SANDRIDGE, M.D. | N/A/   | Deny licensure.  |

Sharon Megdal, Ph.D. was not present when this matter was considered. Brian D. Sandridge, M.D. made a statement to the Board at the call to the public. Dr. Sandridge stated that he is a neurologist from Connecticut and also a recovering alcoholic and drug addict. He tried again after many failed attempts at recovery, is now in a twelve-step program, sees a psychologist, and is monitored by the Connecticut Medical Board. Dr. Sandridge is looking forward to making a new start here in Arizona.

Patrick N. Connell, M.D. stated that this physician went to two treatment programs, was kicked out of both of them and then went to Silver Hill Hospital for a week. The Board has no documentation of an inpatient treatment to satisfy the requirements for licensure. Dr. Connell asked why Michael Sucher, M.D., Monitored Aftercare Program Consultant, would recommend granting this physician a license. Kathleen Muller, Monitored Aftercare Program Coordinator, stated that Dr. Sucher might have recommended this because Dr. Sandridge was in a program and was compliant. Dr. Sucher will be at the meeting tomorrow for questions the Board may have regarding this case.

**MOTION: Tim B. Hunter, M.D. moved to table this matter until tomorrow.**

**SECONDED: Douglas D. Lee, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

Michelle Semenjuk, Licensing Division Chief, reviewed this case with the Board. Dr. Sandridge applied for licensure with the State of Arizona in 2003. In 1998 Dr. Sandridge was prescribed Percocet for dental pain, but his use of the drug escalated throughout the year. The Connecticut Medical Board became aware of the problem and required that Dr. Sandridge enter a treatment program. Dr. Sandridge tested positive for drugs while in treatment, but the Board gave him the opportunity to go to Mississippi for treatment in another program. He left after six weeks against the Connecticut Medical Board's advice. The Connecticut Board then issued a Summary Suspension for immediate surrender of Dr. Sandridge's license. Dr. Sandridge then signed a consent order, voluntarily admitted himself to a detoxification program and entered a residential outpatient program for one month. He was kicked out for use of cocaine. He then went to Silver Hill Hospital for six days as an inpatient, then a halfway house as an outpatient residential. Dr. Sandridge failed more drug screens and was put on a 45-day Time-Out by the Connecticut Medical Board. A year later the Connecticut Medical Board reissued Dr. Sandridge's license with probation for two years. Dr. Sandridge has been compliant since December of 2001. He also passed the Special Purpose Examination (SPEX) in September of 2002.

**NON-TIME SPECIFIC ITEMS (Continued) - BRIAN D. SANDRIDGE, M.D.**

Dr. Connell questioned Dr. Sucher regarding the long history of Dr. Sandridge's chemical dependency and his failure to successfully complete treatments. Dr. Connell stated that this physician has had multiple times where he has failed, and does not meet the Arizona requirements for licensure. Dr. Sucher stated that Dr. Sandridge did successfully complete the Spring Hill Hospital six-day detoxification program followed by the residential program with 24 hour monitoring in September of 2001. After reviewing the file, the documentation from Connecticut states that Dr. Sandridge has been compliant and has satisfied their requirements. Dr. Sucher stated that the physician is safe to practice at this time. Dr. Goldfarb asked if the physician has an unrestricted license in Connecticut. Christine Cassetta, Board Counsel, clarified that although the Connecticut Medical Board removed the word "restriction" if Dr. Sandridge cannot freely practice, he is under a restriction even if the word "restriction" has been removed. Ms. Cassetta referred to the requirements of A.R.S. § 32-1422(A)(4) – Have a professional record which indicates that the applicant has not committed any act or engaged in any conduct which would constitute grounds for disciplinary action against a licensee under this chapter, and A.R.S. § 32-1422(A)(6) – Is not currently under investigation, suspension or restriction by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a medical regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved. Dr. Connell stated that Dr. Sandridge's record indicates that his conduct has been resolved. Also, he is under restriction in Connecticut whether they call it restriction or not.

**MOTION: Patrick Connell, M.D. moved to deny the application for licensure based on the failure to meet A.R.S. § 32-1422(A)(4) and (A)(6).**

**SECONDED: Robert P. Goldfarb, M.D.**

**VOTE: 10-yay, 1-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION |
|-----|-------------|-------------------------|---------------------------|--------|------------------|
| 15. | MD-04-L008A | L.I.                    | MUJIBUR R. MAJUMDER, M.D. | N/A/   | Grant Licensure. |

Sharon B. Megdal, Ph.D. and Becky Jordan were not present when this matter was considered. Dr. Krishna stated that there were billing issues, but the physician was cleared after an investigation.

**MOTION: Ram Krishna, M.D. moved to process the application as normal and grant Dr. Majumder a license.**

**SECONDED: William Martin III, M.D.**

**VOTE: 9-yay, 0-nay, 0-abstain/recuse, 3-absent**

**MOTION PASSED.**

| NO. | CASE NO.                 | COMPLAINANT v PHYSICIAN |                    | LIC. # | BOARD RESOLUTION                    |
|-----|--------------------------|-------------------------|--------------------|--------|-------------------------------------|
| 16. | MD-99-0286<br>MD-99-0416 | AMB                     | MICHAEL MAHL, M.D. | 12868  | Modification of Board Order denied. |

Sharon B. Megdal, Ph.D. was not present when this matter was considered. Wendy Nicholson, Professional Conduct Division Chief, reviewed this case with the Board. Dr. Mahl's Board Order allowed him after one year to request the requirement that he have an allopathic physician supervisor be dropped. This request was prompted because his allopathic supervisor was terminated due to downsizing at the practice. At the November 2003 Teleconference, he had requested that the restriction preventing him from seeing children be lifted. The Board denied that request. However, his reports have been favorable.

Dr. Connell confirmed with Ms. Nicholson that another physician is currently supervising Dr. Mahl. Dr. Connell reminded the Board that this case was complicated and very egregious involving a number of sexual issues as well as substance abuse. Dr. Connell stated that he would support denial of the modification of Board Order.

**MOTION: Patrick Connell, M.D. moved to deny the request for modification of Board order.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent**

**MOTION PASSED.**

| NO. | CASE NO.                                  | COMPLAINANT v PHYSICIAN |                          | LIC. # | BOARD RESOLUTION   |
|-----|---|-------------------------|--------------------------|--------|--|
| 17. | MD-02-0599A<br>MD-03-0330A<br>MD-03-0447A | AMB                     | GERALD J. TAITAGUE, M.D. | 26182  | Letter of Reprimand with Probation for two years.  |
| 18. | MD-03-0378A                               | AMB                     | JOHN S. TRUITT, M.D.     | 21749  | Letter of Reprimand for inappropriately treating a patient with a probable stroke syndrome with whole brain radiation without reasonable evidence of the presence of metastatic brain tumor. |

**NON-TIME SPECIFIC ITEMS (Continued) - JOHN S. TRUITT, M.D.**

Case number 18 was pulled from the block vote for individual consideration. John S. Truitt, M.D. made a statement to the Board at the call to the public. Dr. Truitt stated that he disagrees with the Board's findings and that the CT scan and the bone scan have findings of metastatic disease. He stated that his treatment did not fall below the standard of care. Dr. Truitt stated that he has six opinions supporting his treatment.

Sharon B. Megdal, Ph.D. was not present when this matter was considered. Robert P. Goldfarb, M.D. commented regarding the materials that Dr. Truitt handed out today. Dr. Truitt's point number 9 states that Dr. Goldfarb suggested that the incidence of ovarian cancer metastatic is 1 to 2 percent, but his literature shows 3 percent. Dr. Goldfarb stated that various studies come out with various percentages. The point is that it is a rarity for ovarian tumors to go to the brain and whether it is 1, 2, or 3 percent has very little significance. Dr. Goldfarb also addressed other issues of whole brain radiation performed on a patient who had acute stroke-like syndrome with a tremendous amount of cerebral edema. Dr. Goldfarb amended the Board order to "is hereby ordered a letter of reprimand for inappropriately treating a patient with a probable stroke syndrome with whole brain radiation without reasonable evidence of the presence of metastatic brain tumor."

**MOTION:** Ram Krishna, M.D. moved to approved the draft findings of fact, conclusions of law and order as amended above.

**SECONDED:** Tim B. Hunter, M.D.

**ROLL CALL VOTE WAS TAKEN** and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent when this matter was considered: Sharon B. Megdal, Ph.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 10-yay, 0-nay 0-abstain/recuse, 2-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                            | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|----------------------------|--------|---|
| 19. | MD-03-0560A | AMB                     | RICKY OCHOA, M.D.          | 29570  | Issue Residency Permit effective July 1, 2004 and Probation for five years starting on July 1, 2004.  |
| 20. | MD-96-0746  | AMB                     | GUSTAVE MATSON, M.D.       | 15992  | Letter of Reprimand for violating a Board Order.  |
| 21. | MD-02-0663A | E.W.                    | MALCOLM G. WILKINSON, M.D. | 21001  | Letter of Reprimand for repeatedly failing to cooperate with Board Staff in the process of investigating a complaint.   |
| 22. | MD-03-0018B | AMB                     | MALCOLM G. WILKINSON, M.D. | 21001  | Letter of Reprimand for failing to protect the single remaining uterus of a patient who had previously undergone nephrectomy and for failing to cooperate with Board Staff in the process of investigating a complaint. |

Sharon B. Megdal, Ph.D. was not present when this case was considered.

**MOTION:** Patrick N. Connell, M.D. moved to accept the draft findings of fact, conclusions of law and order for 17 through 22 except for case number 18 which was pulled from the block vote for individual consideration.

**SECONDED:** Ram R. Krishna, M.D.

**ROLL CALL VOTE WAS TAKEN** and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent when this matter was considered: Sharon B. Megdal, Ph.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 10-yay, 0-nay, 0-abstain/recuse, 2-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                          | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|--------------------------|--------|---|
| 23. | MD-03-1310A | AMB                     | JOSEPH E. SHEPPARD, M.D. | 29074  | Probation for five years, participate in the Board's Monitored Aftercare Program. |

Tim B. Hunter, M.D. recused himself from this matter. Sharon B. Megdal, Ph.D. was not present when this matter was considered.

**MOTION:** Becky Jordan moved to accept the consent agreement as written.

**SECONDED:** Ingrid E. Haas, M.D.

**ROLL CALL VOTE WAS TAKEN** and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was recused from voting: Tim B. Hunter, M.D. The following Board member was absent when this matter was considered: Sharon B. Megdal, Ph.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**NON-TIME SPECIFIC ITEMS (Continued) - JOSEPH E. SHEPPARD, M.D.****VOTE: 9-yay, 0-nay 1-abstain/recuse, 2-absent****MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|---------------------------|--------|---|
| 24. | MD-04-0159A | AMB                     | JAQUELINE S. SILKEY, M.D. | 26342  | Interim Consent Agreement for Participation in Board's Monitored Aftercare Program, Practice Restriction dated March 10, 2004 vacated; Interim Consent Agreement terminates on effective date of the Board's final Order in case number MD-04-0159. |

Patrick Connell, M.D. recused himself from this matter. Sharon B. Megdal, Ph.D. was not present when this matter was considered. Jaqueline S. Silkey, M.D. made a statement to the Board at the call to the public. Dr. Silkey stated that she successfully completed an inpatient program and that she is currently working with Dr. Greenberg.

**MOTION: Becky Jordan moved to accept the consent agreement as written.****SECONDED: Ingrid E. Haas, M.D.**

**ROLL CALL VOTE WAS TAKEN** and the following Board members voted in favor of the motion: Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was recused from the motion: Patrick N. Connell, M.D. The following Board member was absent when this matter was considered: Sharon B. Megdal, Ph.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE: 9-yay, 0-nay, 1-abstain/recuse, 2-absent****MOTION PASSED.**

The meeting adjourned at 5:36 p.m.

**THURSDAY, APRIL 15, 2004****CALL TO ORDER**

Edward J. Schwager, M.D., Chair, called the meeting to order at 8:00 a.m.

**ROLL CALL**

The following Board members were present: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**CALL TO THE PUBLIC**

Statements issued during the call to the public appear beneath the case referenced.

**TIME SPECIFIC MATTERS**

| NO. | CASE NO.                   | COMPLAINANT v PHYSICIAN |   | LIC. #        | BOARD RESOLUTION  |
|-----|----------------------------|-------------------------|---|---------------|---|
| 1.  | MD-02-0714A<br>MD-02-0714C | C.P.                    | TERRY S. WOOD, M.D.<br>MICHAEL M. ETZL, JR., M.D. | 9084<br>14377 | Uphold the Executive Director's dismissal   |
|     | MD-02-0714B                |                         | KENNETH G. PIPPUS, M.D.                           | 22412         | Dismissed.  |
|     | MD-02-0714D                |                         | LESLIE D. KRAHL, M.D.                             | 24219         | Advisory Letter for failure to submit an addendum/amendment report that no lymph nodes were provided to pathology in a timely fashion. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. |

C.P. made a statement to the Board at the call to the public. C.P. is speaking on behalf of her three year old son who died on August 9, 2002. Her son received substandard care from the physicians because they failed to unequivocally determine tumor cells. She stated that action other than discipline is not acceptable.

Philip Scheerer, M.D., Board Medical Consultant, reviewed this case with the Board. Dr. Scheerer stated this is an involved case reviewed by several Outside Medical Consultants.

Ram R. Krishna, M.D. stated that after listening to the presentation and reviewing the records he would support upholding the Executive Director's dismissal of case numbers MD-02-0714A and MD-02-0714C.

## **TIME SPECIFIC MATTERS (Continued)**

**MOTION:** Ram Krishna, M.D. moved to uphold the Executive Director's dismissal for case numbers MD-02-0714A and MD-02-0714C.

**SECONDED:** Patrick Connell, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

MD-02-0714B Kenneth G. Pippus, M.D. – Dr. Krishna stated that the failure to determine the prognostic classification of a tumor is important. He would support an advisory letter for failure to determine prognostic classification of the tumor.

**MOTION:** Dr. Krishna moved to issue an advisory letter for failure to determine prognostic classification of the tumor. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action for case number MD-02-0714B

**SECONDED:** William Martin III, M.D.

Sharon B. Megdal, Ph.D. requested that the wording be consistent with the statutes and in this case would be A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. Edward J. Schwager, M.D. commented that this case should be dismissed. Tim B. Hunter, M.D. referred to C. Peter Crowe, M.D., Outside Medical Consultant's report. Dr. Hunter stated that Dr. Crowe commented that four of the allegations were not substantiated; yet Dr. Crowe concluded that Dr. Pippus did not meet the standard of care when he became aware of the neuroblastoma and failed to order specific tests. Dr. Scheerer stated that this tumor was 90 percent necrotic. The pathologist is to make a diagnosis over a prognostic report they may not know anything about. There was nothing more to sample. Dr. Connell stated that in regards to a team he does not find fault with Dr. Pippus because this seems like an institutional problem.

**VOTE:** 4-yay, 7-nay, 0-abstain/recuse, 1-absent

**MOTION FAILED.**

**MOTION:** Patrick Connell, M.D. moved to dismiss this case.

**SECONDED:** Tim B. Hunter, M.D.

**VOTE:** 7-yay, 4-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

MD-02-0714D – Leslie D. Krah, M.D. – Tim B. Hunter, M.D., stated that there was an incomplete pathology report specifically because Dr. Krah did not receive lymph node material or that it was forthcoming.

**MOTION:** Tim B. Hunter, M.D. moved to issue an advisory letter for failure to submit an addendum/amendment report that no lymph nodes were provided to pathology in a timely fashion. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

**SECONDED:** Patrick Connell, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                         | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|-------------------------|--------|---|
| 4.  | MD-03-0245A | AMB                     | THOMAS A. FRANCIS, M.D. | 18537  | Stayed Revocation and indefinite Probation with the opportunity to request modification of the Probation after ten years. |

Attorney Carolyn A. Holden made a statement to the Board at the call to the public. She stated that Thomas A. Francis, M.D. is offering no excuse for what he did. He has embarrassed himself, his family, and his practice. She pointed out to the Board that there was no victim or patient that he has been sexually inappropriate with. This is not who he is, and this is an isolated event of extremely poor judgment.

Dr. Francis stated he would like to get his life back on track and would like to be able to practice in medicine by getting his license back. He expressed shame for what he did and apologized to the Board. Dr. Francis informed that Board that he has started counseling with weekly group therapy. He will be going through a life-time of therapy and if he misses two times in a row, he will be reprimanded to jail for five to fifteen years. He has a lot to live up to and a lot to lose if he breaks any of the rules of the State and the Arizona Medical Board. Dr. Francis stated that he would also be going through a series of polygraph tests.

Sharon B. Megdal, Ph.D. asked Dean Brekke, Assistant Attorney General if there were provisions discussed in the consent agreement regarding a ten year probation with a chaperone and if the physician could apply to have the chaperone requirement lifted at the expiration of ten years. She stated that the courts required an indefinite term with the ability to request that it be

**TIME SPECIFIC MATTERS (Continued) - THOMAS A. FRANCIS, M.D.**

removed after a specific amount of time. Mr. Brekke stated that there has been no indication from the history to determine any other inappropriate sexual behavior so that option was not considered.

**MOTION: Robert P. Goldfarb, M.D. moved to rescind the referral to formal hearing accept the proposed consent agreement**

**SECONDED: Tim B. Hunter, M.D.**

Ram Krishna, M.D. asked if the physician would agree to lifetime probation with the stipulation to request modification after ten years. Dr. Francis agreed verbally. Dr. Krishna suggested amending the proposed consent agreement to include lifetime probation with the opportunity to modify the probation after ten years. Dr. Megdal agreed. Dr. Goldfarb agreed to amend his motion. Dr. Hunter agreed to amend his second to the motion.

**MOTION: Robert P. Goldfarb, M.D. moved to rescind the referral to formal hearing and accept the proposed consent agreement for a stayed revocation and indefinite probation with the opportunity to request modification of the probation after ten years.**

**SECONDED: Tim B. Hunter, M.D.**

**ROLL CALL VOTE WAS TAKEN and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                       | LIC. # | BOARD RESOLUTION             |
|-----|-------------|-------------------------|-----------------------|--------|------------------------------|
| 9.  | MD-03-0859A | C.B.                    | JOHN M. RITLAND, M.D. | 17     | Motion for Rehearing Denied. |

Robert P. Goldfarb, M.D. stated that he has had a professional relationship with attorney Robert J. Milligan, but that will not affect his ability to adjudicate this case.

Mr. Milligan made a statement to the Board on behalf of John M. Ritland, M.D. Mr. Milligan asked the Board to consider two things. Mr. Milligan requested that the Board ask themselves if the allegations against Dr. Ritland are believable. He further questioned what would make the Administrative Law Judge (ALJ) believe that the accusers were credible and that Dr. Ritland is not credible. He stated that Dr. Ritland's professional life is at stake. He asked that the Board grant the motion for review or rehearing.

Attorney Stephen Myers made a statement to the Board on behalf of Dr. Ritland. He stated that he disagrees with the Assistant Attorney General that the Board cannot reject the credibility finding of the ALJ. The ALJ made a recommendation, but the Board will make the decision. The ALJ would not explain how he came to the irrational decision he came to. Not having the ability to discuss his patient's sexuality issues with them would have serious consequences, since Dr. Ritland is an obstetrician/gynecologist (OB/GYN). The Arizona Medical Board would be like a rubber stamp for the ALJ if they deny the motion for rehearing. The Board has been asked to adopt irrationality. He believes that the public would be well served if the Board would dismiss a case against a physician where the burden of proof has not been met.

**MOTION: Edward Schwager, M.D. moved to go into executive session at 9:27 a.m.**

**SECONDED: Sharon Megdal, Ph.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

**The Board returned to open session at 9:45 a.m.**

**MOTION: Sharon Megdal, Ph.D. moved to deny the motion for rehearing**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 10-yay, 1-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

**TIME SPECIFIC MATTER**

| NO. | CASE NO.   | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION   |
|-----|------------|-------------------------|---------------------------|--------|--|
| 1.  | MD-98-0063 | AMB                     | BRIAN M. SCHNEIDER, M.D.  | 11361  | Dismissed.   |
|     |            |                         | JEREMY R. TORSTVEIT, M.D. | 8354   | Rescind referral to Formal hearing and conduct the Formal Interview. |

**TIME SPECIFIC MATTER (Continued) - BRIAN M. SCHNEIDER, M.D. & JEREMY R. TORSTVEIT, M.D.**

Brian M. Schneider, M.D. made a statement to the Board at the call to the public. Dr. Schneider stated that he attended today should the Board have any questions.

MD-98-0063 Brian M. Schneider, M.D.

Stephen Wolf, Assistant Attorney General, informed the Board that the State's position is clear on this case with the memo provided to them.

**MOTION: Douglas D. Lee, M.D. moved to rescind the referral to formal hearing and dismiss this case.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

MD-98-0063 Jeremy R. Torstveit, M.D.

**MOTION: Tim B. Hunter, M.D. moved to rescind the referral to formal hearing and conduct the formal interview.**

**SECONDED: William Martin III, M.D.**

**VOTE: 11-yay, 0-nay 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

**FORMAL INTERVIEWS**

| NO. | CASE NO.   | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION |
|-----|------------|-------------------------|---------------------------|--------|------------------|
| 1.  | MD-98-0063 | AMB                     | JEREMY R. TORSTVEIT, M.D. | 8354   | Dismissed.       |

Jeremy R. Torstveit, M.D. appeared before the Board with his attorney Frank Verderame.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. This case involved the care of an infant. Dr. Kennell stated that the critical issue was if proper shunting was done that resulted in brain damage to the infant.

Dr. Torstveit made a statement to the Board. Dr. Torstveit stated that when a patient has a bad outcome a person feels a personal responsibility. At the time that a surgery was performed, Dr. Torstveit felt that he did the very best under the circumstances this patient had. He has lived with this for long time and feels very badly for the mother whom he knew very well. At the time the surgery was performed, he had done approximately 1000 procedures. From 1992 to 1996 he participated in the yearly symposiums, debating and discussing cardiac surgery, considered cutting edge. The procedure has changed from time to time, but in 1994 the recommendations were that physicians would create a small shunt from the subclavian artery to the pulmonary artery. Of approximately 50 percent of the successful operations, the child dies by the age of fifteen year old.

Ram R. Krishna, M.D., presenting Board member, began the questioning of Dr. Torstveit. Dr. Krishna asked if Dr. Torstveit had any problems with the first operation. Dr. Torstveit stated that the infant was very small. Dr. Krishna asked if the child gained enough weight when the child came back six months later. Dr. Torstveit stated that the baby weight 5.8 kilograms and as a group it was decided that it was time to have the surgery done. There was a narrowing of the pulmonary artery. He elected to do the operation and not canulate the superior canulvila. The patient had become an excellent candidate upon returning. Dr. Krishna asked what Dr. Torstveit could have done differently. Dr. Torstveit stated that he could not have changed the outcome and would not do anything differently. Dr. Krishna asked what his present practice was. Dr. Torstveit stated that he has developed a problem with his hand and is not doing heart surgery. He is currently doing peer review, teaching in the cardiology fellowship at Good Samaritan, and has his heart surgery program going on in Sri Lanka. Dr. Torstveit also teaches physicians to screen candidates for surgery. Robert P. Goldfarb, M.D. stated that in the record there is a criticism that the profusionist had warned Dr. Torstveit that the patient's pressure was above an acceptable level. Dr. Torstveit stated there is not much that you can do. Dr. Connell brought up a comment by the medical consultant that the child could have been cooled. Dr. Torstveit stated that he would not have cooled the patient, but would have let his temperature drift. The child was deeply cyanotic and he needed to get the patient's heart rate down. In fact most of the adults are now put on warm. He would have cooled the patient to possibly protect him better. Dr. Lee asked if there was a preoperative way to anticipate what happened. Dr. Torstveit stated that there is no way of knowing ahead of time.

Frank Verderame made a statement to the Board on behalf of Dr. Torstveit. Mr. Verderame pointed out the size of the infant and what Dr. Torstveit was working with in size was not inches but millimeters. The important part was locating the length and where the procedure could be done. The consultant, after reviewing the new materials, changed his opinion that this fell below the standard of care. This case is not appropriate for discipline and asked the Board to dismiss this case.

Dr. Kennell stated that Dr. Torstveit's reputation was impeccable. Dr. Kennell stated that in the past he has cared for some of Dr. Torstveit's patients and they were very well cared for.

**FORMAL INTERVIEWS (Continued) - JEREMY R. TORSTVEIT, M.D.**

Dr. Krishna stated that this is a complex case and under the circumstances the physician handled this case fairly well.

**MOTION:** Dr. Krishna moved to dismiss this case.

**SECONDED:** Tim B. Hunter, M.D.

**ROLL CALL VOTE WAS TAKEN** and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

**TIME SPECIFIC MATTERS (Continued)**

| NO. | CASE NO.                  | COMPLAINANT v PHYSICIAN |                     | LIC. # | BOARD RESOLUTION  |
|-----|---------------------------|-------------------------|---------------------|--------|---|
| 2.  | MD-00-0310<br>MD-02-0732A | AMB                     | DEBORAH AARON, M.D. | 22495  | Advisory Letter for unprofessional conduct for MD-00-0310 for failing to terminate the fundoplication procedure upon experiencing problems with the lapaoscope and problems administering the gas into the area; failing to timely recognize that she had perforated the esophagus; and, failing to appreciate the seriousness of the problem post-surgery for unprofessional conduct for MD-02-0732 for providing prescription medication without establishing a physician patient relationship. She has demonstrated remediation that has mitigated the need for disciplinary action. |
|     | MD-00-0535                |                         |                     |        | Letter of Reprimand for unprofessional conduct arising from MD-00-0535 for falling below the standard of care by failing to appreciate the risks of surgery pre-operatively; failing to terminate the surgical procedure when she recognized complications; and failing to appropriately treat the patient post-operatively.  |

**MOTION:** Sharon Megdal, Ph.D. moved to rescind the referral to formal hearing and accept the proposed consent agreement.

**SECONDED:** William R. Martin III, M.D.

**ROLL CALL VOTE** was taken and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.                 | COMPLAINANT v PHYSICIAN |                           | LIC. # | BOARD RESOLUTION   |
|-----|--------------------------|-------------------------|---------------------------|--------|--|
| 5.  | MD-02-0422A              | AMB                     | HOWARD H. ROBERTSON, M.D. | 16725  | Vacate Interim Consent Agreement, dated July 8, 2002, between Respondent and the Board is hereby vacated and is not in effect; License Surrendered upon adoption of this Consent Agreement by the Board. |
|     | MD-01-0613<br>MD-01-0035 |                         |                           |        | Dismissed.   |

**MOTION:** Sharon Megdal, Ph.D. moved to rescind referral to formal hearing and accept consent agreement for case number MD-02-0422A

**SECONDED:** Patrick Connell, M.D.

**ROLL CALL VOTE** was taken and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

**TIME SPECIFIC MATTERS (Continued) - HOWARD H. ROBERTSON, M.D.**

**MOTION:** William Martin III, M.D. moved to dismiss this case numbers MD-01-0613 and MD-01-0035.

**SECONDED:** Robert P. Goldfarb, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.  | COMPLAINANT v PHYSICIAN |                      | LIC. # | BOARD RESOLUTION   |
|-----|---|-------------------------|----------------------|--------|--|
| 6.  | MD-00-0792<br>MD-01-0623<br>MD-01-0869<br>MD-02-0255A | AMB                     | RALPH W. COLLA, M.D. | 26814  | Decree of Censure for falling below the standard of care in performing unnecessary surgical procedures on patients; for failing to maintain adequate records on patients; and for failure to diagnose an ectopic pregnancy. Restricted from acting as primary surgeon for gynecological or obstetric surgeries requiring conscious or unconscious sedation; Respondent may perform surgical assists in these areas as well as office procedures not requiring general sedation or general anesthesia; restriction shall remain in effect until the Respondent applies to the Board and the Board approves Respondent's return to practice in these areas; subject to chart review within 6 months of the effective date of this Order; Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in Arizona, and remain in full compliance with any court ordered criminal probation, payments and other orders. |

**MOTION:** Ram Krishna, M.D. moved to rescind the referral to formal hearing and accept the proposed consent agreement.

**SECONDED:** Douglas D. Lee, M.D.

**ROLL CALL VOTE WAS the following Board members voted in favor of the motion:** Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. **The following Board member was absent from the meeting:** Ronnie R. Cox, Ph.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                       | LIC. # | BOARD RESOLUTION                   |
|-----|-------------|-------------------------|-----------------------|--------|------------------------------------|
| 3.  | MD-03-0121A | AMB                     | JEFFREY M. PONT, M.D. | 14308  | Surrender of license to the Board. |

**MOTION:** Ram Krishna, M.D. moved to rescind the referral to formal hearing and accept the proposed consent agreement.

**SECONDED:** Tim B. Hunter, M.D.

**ROLL CALL VOTE WAS TAKEN and The following Board members voted in favor of the motion:** Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. **The following Board member abstained from the motion:** Patrick N. Connell, M.D. **The following Board member was absent from the meeting:** Ronnie R. Cox, Ph.D.

**VOTE:** 10-yay, 0-nay, 1-abstain/recuse, 1-absent

**MOTION PASSED.**

**FORMAL INTERVIEWS (Continued)**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                      | LIC. # | BOARD RESOLUTION |
|-----|-------------|-------------------------|----------------------|--------|------------------|
| 2.  | MD-03-0022A | AMB                     | DRAKE D. DUANE, M.D. | 16903  | Dismissed.       |

Drake D. Duane, M.D. appeared before the Board with his attorney Fredrick M. Cummings.

Philip Scheerer, M.D., Board Medical Consultant reviewed this case with the Board. The allegation is that Dr. Duane failed to properly prescribe to his patient D.P.

Dr. Duane made a statement to the Board. Dr. Duane pointed out that the diagnosis for this patient was not psychiatric. There has been no complaint to the Board by the family. Dr. Duane stated that the family was satisfied with the recommendations and treatment and the patient has had a good outcome.

## **FORMAL INTERVIEWS (Continued) - DRAKE D. DUANE, M.D.**

Robert P. Goldfarb, M.D., presenting Board member, began the questioning of Dr. Duane. Dr. Goldfarb stated that the patient was given the maximum dose versus the smallest doses and inquired how Dr. Duane came up with the dose for the use of Ritalin. Dr. Duane stated he concluded that the maximum dose was the correct dose after assessing the patient with his family agreeing. Dr. Goldfarb stated that with the high dose of Ritalin or Methylphenidate (MPH) there were some signs of aggression. Dr. Duane said that an alternative agent would buffer that effect. Dr. Goldfarb asked if decreasing the dose would help. Dr. Duane stated that mutual decision with the family would be not to reduce the dosage. Dr. Goldfarb asked Dr. Duane about the note he received from Merck Medco regarding the doses. Dr. Duane stated that the doses were regarding a patient who had a head injury and was in a coma. Dr. Goldfarb asked when a patient is on many medications when would it be reasonable to perform a neurological examination. Dr. Duane stated that it is required when there is a new symptom. Dr. Duane provided to the Board four articles regarding narcolepsy. The goal is to always decrease dosages because the long-term effects are unknown. Dr. Duane stated that he still sees this patient on an annual basis. Dr. Duane stated that patient's drug levels are monitored. Dr. Connell noticed on the office visit prior to the patient's brain injury the mother reported two events of narcoleptic episodes. Dr. Duane stated that patients are warned not to go to the edge of the Grand Canyon, for example, and to be careful of heights.

Fredrick M. Cummings made a statement to the Board on behalf of Dr. Duane. The family has confidence in Dr. Duane. One of the reasons for materials the Board has received in the last 30 days is regarding the prescribing. Mr. Cummings stated that because of the specialized nature of Dr. Duane's field this would have been cleared up with an investigational interview. Also, the Board Medical Consultant did not have the thinking of Dr. Duane and the allegation of improper prescription of a patient who has been a patient for fifteen years and he has treated since childhood. Mr. Cummings urged the Board to review the literature that Dr. Duane has provided to see that his actions were correct.

Dr. Hunter stated the physician has presented himself well and the patient or his family has no complaint. He would support dismissal.

**MOTION: Tim B. Hunter, M.D. moved to dismiss this case.**

**SECONDED: Douglas D. Lee, M.D.**

**ROLL CALL VOTE WAS TAKEN and the following Board members voted in favor of the motion: Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member voted against the motion: Patrick N. Connell, M.D. The following Board member abstained from the motion: William R. Martin III, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 9-yay, 1-nay, 1-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                        | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|------------------------|--------|--|
| 3.  | MD-03-0826A | AMB                     | MARTIN L. MEYERS, M.D. | 27917  | Draft Finding of Fact, Conclusions of Law and Order for a Letter of Reprimand for violating a Board Order. |

Martin L. Meyers, M.D. appeared before the Board with his attorney Robert J. Milligan.

Kathleen Muller, Monitored Aftercare Program Coordinator, reviewed this case with the Board. In August of 2003 the Board received information that Dr. Meyers was verbally suspended from Page Hospital because of a positive drug test. Dr. Meyers received treatment approximately twenty years ago. Michael Sucher, M.D., Monitored Aftercare Program Consultant, recommended that Dr. Meyers stop practicing and enter into an inpatient treatment facility such as Hazelton Springbrook or the Betty Ford Center. This was not favorable to Dr. Meyers because of the expense. Dr. Meyers then signed an interim consent agreement requiring treatment at Banner Behavioral Health, but instead he attended an alternative treatment center resulting in a violation of the agreement.

Dr. Meyers made a statement to the Board. Dr. Meyers stated that he signed an agreement with the Board versus having his license suspended. He wrote a letter to Dr. Cassidy and explained his decision to go to the Sedona treatment center as he felt it was best for him. He cannot be a physician if he is not sober and not on medication. While he was in treatment, he sent correspondence to Dr. Cassidy. His psychiatrist sent a letter in support of this type of treatment. Dr. Meyers stated that he understands that the Board is now considering Desert Canyon at Sedona. He is making great strides to make things right and would like the Board to consider this alternative treatment.

Patrick Connell, M.D. began the questioning of Dr. Meyers. Dr. Meyers stated that he was treated in the mid-1980's for chemical dependency with a twelve-step program. Dr. Meyers remained in recovery for a month and then relapsed. Dr. Meyers stated that he did not have a lot of time to determine if he understood the interim agreement that he signed. He was active in his disease and may not have been totally competent at the time. Dr. Meyers stated that his sobriety date was the first week in September of 2003. Dr. Connell noted that although Dr. Meyers contends that a twelve-step program does not work for him, he was sober for over 20 years after completing a twelve-step program. Dr. Meyers agreed that he violated the consent agreement. Tim B. Hunter, M.D.

## **FORMAL INTERVIEWS (Continued) - MARTIN L. MEYERS, M.D.**

asked if he would comply with the self-help program. Dr. Meyers stated that he would. Dr. Schwager stated that at this time the Dr. Meyers does have an order preventing him from practicing until he is in remission and safe to practice. Dr. Meyers stated that he chose to go to the Sedona program because of the costs and that it would work for him. Dr. Sucher informed him that he would need to go to a facility approved by the Board.

Mr. Milligan made a statement to the Board on behalf of Dr. Meyers. Mr. Milligan stated that Dr. Meyers would not return to practice until he is safe to practice.

Dr. Connell recommended that the Board support a finding of unprofessional conduct in violation of A.R.S. § 32-1401(26)(r) – Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter. Dr. Schwager stated that the violation of a Board Order is considered egregious. This Board does not desire to set a precedent that a physician can sign an Order and decide to go elsewhere on his own.

**MOTION: Patrick Connell, M.D. moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(26)(r) – Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

**MOTION: Patrick Connell, M.D. moved for Board staff to draft findings of fact conclusions of law and order for a letter of reprimand for violating a Board Order.**

**SECONDED: Sharon Megdal, Ph.D.**

**ROLL CALL VOTE WAS TAKEN and the following Board members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., and Edward J. Schwager, M.D. The following Board member was absent from the meeting: Ronnie R. Cox, Ph.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

## **RECOMMENDATION FOR NON-DISCIPLINARY ACTION**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                     | LIC. # | BOARD RESOLUTION |
|-----|-------------|-------------------------|---------------------|--------|------------------|
| 7.  | MD-03-0774A | E.V.                    | ALAN L. MILES, M.D. | 12412  | Dismissed.       |

Alan L. Miles, M.D. made a statement to the Board at the call to the public. Dr. Miles stated that the Board has the details of a simple situation. Dr. Miles has been a geriatric physician in Sun City for a number of years now. Dr. Miles stated that records are placed on his chair so he can expeditiously process them. Because of the change of staff, the records were not taken care of timely and properly. Dr. Miles stated that he does have to rely on others to do their job. He has now hired a part time practice consultant to improve his practice with administrative issues as well as bigger issues. He asks his one of his office employees every day if she sent the records. He takes responsibility but he requests that if it is at all possible, he would like to have his record clean so that he can correct and not allow this to happen again.

Dr. Goldfarb asked how long the delay was in sending the records. Staff acknowledged four to five months. Phil Smyth, Senior Investigator, stated that the patient only made one request for the records.

**MOTION: Ram Krishna, M.D. moved to dismiss this case.**

**SECONDED: Robert P. Goldfarb, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

## **TIME SPECIFIC MATTERS (Continued)**

| NO. | CASE NO.   | COMPLAINANT v PHYSICIAN |                       | LIC. # | BOARD RESOLUTION   |
|-----|------------|-------------------------|-----------------------|--------|--|
| 7.  | MD-01-0861 | AMB                     | MARVIN L. GIBBS, M.D. | 13736  | Rescind Referral to Formal Hearing and Notice the Physician. |

Stephen Wolf, Assistant Attorney General, stated that the reason for rescinding the referral to formal hearing was because Dr. Gibbs did not receive a notice of the allegations along with new allegations, nor an opportunity to respond to the allegations before the Board was requested to refer this matter to formal hearing.

**MOTION: Tim B. Hunter, M.D. moved to rescind the referral to formal hearing and direct staff to notice the physician.**

**SECONDED: Robert P. Goldfarb, M.D.**

**TIME SPECIFIC MATTERS (Continued) - MARVIN L. GIBBS, M.D.****VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent****MOTION PASSED.**

| NO. | CASE NO.   | COMPLAINANT v PHYSICIAN |                          | LIC. # | BOARD RESOLUTION             |
|-----|------------|-------------------------|--------------------------|--------|------------------------------|
| 8.  | MD-98-0633 | B.F.                    | MOSHE HACHAMOVITCH, M.D. | 11395  | Motion for Rehearing Denied. |

**MOTION: Sharon Megdal, Ph.D. moved to deny the motion for rehearing.****SECONDED: Patrick Connell, M.D.****VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent****MOTION PASSED.****RECOMMENDATION FOR NON-DISCIPLINARY ACTION (Continued)**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                       | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|-----------------------|--------|---|
| 1.  | MD-03-0382A | AMB                     | BRYAN A. GUNNOE, M.D. | 22817  | Advisory Letter for failure to maintain satisfactory funds of knowledge and skill levels in general orthopedics. A.R.S. § 32-1401(3)(c) - While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee. |

Attorney Fred Zeder made a statement to the Board at the call to the public. Mr. Zeder requested that the Board delete the last portion of the advisory letter stating, "the board believes that the repetition of activities that led to the investigation may result in further action against the licensee." Mr. Zeder stated that Dr. Gunnoe is currently looking for a job, but that statement would make it extremely difficult to find further employment. Dr. Gunnoe has undergone the Physician Assessment and Clinical Education Program (PACE) and has demonstrated considerable improvement.

Bryan A. Gunnoe, M.D. made a statement to the Board at the call to the public. Dr. Gunnoe stated that a lot has happened to him in the last four years with his recovery. He has changed his attitude with anger and with the use of alcohol. He has also received letters of recommendations.

Sharon Megdal, Ph.D. commented that the language that the Board has been asked to remove is sighting a rule. Edward J. Schwager, M.D. stated that there were numerous cases lumped together, then mitigated by doing course work improving his orthopedic skills. Dr. Schwager suggested a letter or reprimand or an order of stayed probation.

William Kennell, M.D., Board Medical Consultant, stated that he initially reviewed this case. The issues come down to personal problems at the hospital and he found no fault with the physician's specialty of spinal surgery. They were no gross transgressions of general surgery or general orthopedics. The problem was poor interpersonal relationships in the operating room. Dr. Gunnoe is trying to make a recovery and he has complied with the recommendations to bring his orthopedic skills into line. The recommendation by Dr. Greenberg was very strong. Dr. Schwager stated that there were nine different medical cases reviewed and eight of the nine fell below the standard or care in some fashion. Dr. Kennell stated that the physician did comply with the recommendations to improve.

**MOTION: Sharon Megdal, Ph.D. moved to issue an advisory letter for failure to maintain satisfactory fund of knowledge and skill levels in the specialty in which he has privileges and practices medicine. A.R.S. § 32-1401(3)(c) - While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.**

**SECONDED: Patrick Connell, M.D.****VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent****MOTION PASSED.****MOTION: Sharon Megdal, Ph.D. moved to reconsider the motion.****SECONDED: Patrick Connell, M.D.****VOTE: 11-nay, 0-nay, 0-abstain/recuse, 1-absent****MOTION PASSED.**

Dr. Schwager stated that the sentence Mr. Zeder requested to remove is the last section of A.R.S. § 32-1401(3)(c) - While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for

**RECOMMENDATION FOR NON-DISCIPLINARY ACTION (Continued) - BRYAN A. GUNNOE, M.D.**

disciplinary action, the Board believes that repetition of the activities that led to the to the investigation may result in further board action against the licensee. Dr. Schwager asked Christine Cassetta, Board Counsel, if the Board can accommodate that request or does the entire statute need to be cited. Ms. Cassetta stated that the entire statute must be cited. Steve Wolf, Assistant Attorney General, reiterated this. Dr. Megdal commented that there is an issue and the citation is important to use. Dr. Megdal supported keeping in the last sentence of the statute cited.

**MOTION: Edward Schwager, M.D. moved to issue an advisory letter for failure to maintain satisfactory funds of knowledge and skill levels in general orthopedics. A.R.S. § 32-1401(3)(c) - While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                        | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|------------------------|--------|---|
| 2.  | MD-03-0071A | AMB                     | STANLEY A. LEVIN, M.D. | 5114   | Advisory Letter for early induction of labor without confirmation of maternal or fetal indication. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. |

Dr. Megdal stated that the Staff Investigational Review Committee (SIRC) Recommendation did not include if this was a technical violation or cite a statute. Dr. Haas stated that the physician took an appropriate action and did everything with appropriate consultation and medical knowledge. An advisory letter would be adequate for this case.

Robert Barricks, M.D., Board Medical Consultant, stated that the patient was admitted to the hospital at 28 weeks. Later she was left under the care of Stanley A. Levin, M.D. She had no signs or symptoms of pilonephritis. The pediatrician got involved and a discussion ensued about inducing the patient. The perinatologist had no record of whom he talked to. Dr. Levin decided to induce the patient. Dr. Barricks stated that when a physician is in charge of a patient, that physician could decide on another plan if appropriate. This patient was induced for no reason.

**MOTION: Edward Schwager, M.D. moved to issue the advisory letter for early induction of labor without confirmation of maternal or fetal indication. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.**

**SECONDED: Ingrid E. Haas, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                        | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|------------------------|--------|--|
| 3.  | MD-03-0172A | AMB                     | RAYMOND F. GRAAP, M.D. | 5332   | Invite Dr. Graap to a Formal Interview before the Board. |

Edward J. Schwager, M.D. stated that he knows Raymond F. Graap, M.D., but this will not affect his ability to adjudicate this case.

Dr. Schwager stated that the recommendation is to issue an advisory letter for failure to do a rectal examination ultimately delaying the diagnosis of rectal cancer. He did not see records from Dr. Graap in the Board's materials, although there were records from other treating physicians. Dr. Kirschner stated that the patient was seen on August 11, 1997 complaining of extreme gas with pain in his rectum. Nothing was done about this. He was seen again in September of 1997, but that was for a heart condition. The patient complained of gas with liquid stools. The patient was told to come back in three to four months. The patient was then seen three months later by phone. There was no rectal examination to find out what the problem was. Dr. Schwager confirmed with Dr. Kirschner that there was no red stool. Dr. Kirschner stated that this physician fell below the standard of care because the patient's complaint of diarrhea, gas and liquid stools were never addressed. Dr. Krishna commented that the patient's initial visit was for cardiac complaints with a mention of flatulence. He asked Dr. Kirschner if he should have been referred to a specialist. Dr. Kirschner stated that because of the patient's age, a rectal examination should have been performed.

**MOTION: Ram Krishna, M.D. moved to invite Dr. Graap to a formal interview before the Board.**

**SECONDED: Patrick Connell, M.D.**

Dr. Schwager stated that he disagrees with the motion as with the recommended follow up. The physician handled the situation appropriately because of his specialty. The patient was handled by phone for a follow up. Dr. Schwager stated that to say gas and diarrhea alone are symptoms of carcinoma would be a stretch. You could possibly have those symptoms from eating at a restaurant. Dr. Schwager stated that the patient did not complain of constipation and finds it difficult finding fault to the degree that

**RECOMMENDATION FOR NON-DISCIPLINARY ACTION (Continued) - RAYMOND F. GRAAP, M.D.**

Dr. Kirschner concluded. Dr. Megdal agreed with Dr. Schwager and would support dismissal. Dr. Haas stated that the patient was seen a year earlier and had three positive stool samples. She questioned whether Dr. Graap should have followed-up and whether he had the records. Dr. Schwager stated that the physician was not noticed for records. Dr. Krishna stated that the patient called the physician about gas and liquid stools on a few occasions. Dr. Connell verified with Dr. Schwager that a rectal examination would typically be part of a general physical. Dr. Schwager stated in this case, the physician had plans at some point that would have been done. Dr. Haas stated that if the physician was invited for a formal interview it might clear up the Board's questions. Dr. Megdal suggested tabling this case to see if the Board could obtain Dr. Graap's records of this patient.

**VOTE: 8-yay, 3-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                       | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|-----------------------|--------|---|
| 4.  | MD-03-0455A | A.M.                    | CHRISTA C. CORN, M.D. | 18489  | Advisory Letter for failure to perform a pre-operative evaluation and maintain adequate records. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. |

A.M. made a statement to the Board at the call to the public. A.M. stated that he is here because of an improper medical procedure performed by Christa C. Corn, M.D. in 2002. Another surgery was performed in 2003 because of that procedure. He has a big bulge still causing him problems even after the third surgery making it hard for him to bend down. This also causes him pain when coughing or sneezing.

**MOTION: Sharon Megdal, Ph.D. moved to issued an advisory letter for failure to perform a pre-operative evaluation and maintain adequate records. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.**

**SECONDED: Ram Krishna, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                        | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|------------------------|--------|--|
| 5.  | MD-03-0432A | AMB                     | MARY C. MICHELIS, M.D. | 28955  | Invite Dr. Michelis for a Formal Interview pending Board staff offering a Consent Agreement for a Letter of Reprimand. |

Robert P. Goldfarb, M.D. stated that he has a problem with this case. He stated that the recommendation for an advisory letter was the result of an action taken by the state of California. This physician's actions were quite egregious, however Dr. Michelis did take an ethics class. Christine Cassetta, Board Counsel, suggested that the Board does have the option of inviting Dr. Michelis for a formal interview before the Board. Sharon B. Megdal, Ph.D. commented that the Board takes it seriously when a physician does not disclose actions from another state on their license applications or renewals. Ram R. Krishna, M.D. stated that the statutes are very clear on this matter. Ms. Cassetta also noted that the physician would need to be re-noticed before the formal interview because she was noticed on practicing without a license, but she has a license. The proper statutory notice would be 32-1401(26)(cc) – maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine. Board Staff can consult with the Board's litigators for further instruction.

**MOTION: Dr. Hunter moved to invite Dr. Michelis for a formal interview pending Board staff to offer a consent agreement for letter of reprimand.**

**SECONDED: Patrick Connell, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                     | LIC. # | BOARD RESOLUTION  |
|-----|-------------|-------------------------|---------------------|--------|---|
| 6.  | MD-03-0368A | AMB                     | TODD J. DAVIS, M.D. | 28454  | Invite Dr. Davis for a Formal Interview before the Board. |

Dr. Connell stated that this case involves a patient with chest pain and an abnormal electrocardiogram (EKG) who was sent home. Dr. Connell stated that this is a violation of a basic function required of a physician in the emergency department.

**MOTION: Sharon Megdal, Ph.D. moved to invite Dr. Davis for a formal interview before the Board.**

**SECONDED: Patrick Connell, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

**RECOMMENDATION FOR NON-DISCIPLINARY ACTION (Continued)**

| NO. | CASE NO.                                  | COMPLAINANT v PHYSICIAN |  | LIC. #                  | BOARD RESOLUTION  |
|-----|---|-------------------------|--|-------------------------|---|
| 8.  | MD-03-0555A<br>MD-03-0555B<br>MD-03-0555C | AMB                     | PARMESHVAR M. KHAMRE, M.D.<br>MICHAEL CASTRO, M.D.<br>RAMACHANDRA N. RAO, M.D. | 12905<br>25381<br>25615 | Advisory Letter for failure to maintain OSHA standards in his office as he has already taken remedial action to correct the deviation. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. |

Michael Castro, M.D. made a statement to the Board at the call to the public. Dr. Castro stated that this Occupational Safety Health Administration (OSHA) violation that had to do with record keeping, but no patient harm. He has now changed his practices by hiring a company to help him become OSHA compliant.

**MOTION: Patrick Connell, M.D. moved to dismiss this case.**

**SECONDED: Tim B. Hunter, M.D.**

Patrick N. Connell, M.D. stated this was a paperwork deficiency, but was addressed and corrected. Edward J. Schwager, M.D. stated that Dr. Connell's explanation of mitigation is appropriate for an advisory letter. Sharon B. Megdal, Ph.D. agreed with Dr. Schwager specifically if there has been a violation of statute. Dr. Schwager verified the statutes listed by the Staff Investigational Review Committee (SIRC) are A.R.S. § 32-1401(26)(a) – Violating any federal or state laws or rules and regulations applicable to the practice of medicine, and A.R.S. § 32-1401(26)(q) – Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public. Dr. Megdal agreed that A.R.S. § 32-1401(26)(a) would be appropriate. Ram R. Krishna, M.D. stated that A.R.S. § 32-1401(26)(b) would also be appropriate which states “Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.” Dr. Megdal stated that A.R.S. § 32-1401(26)(q) would not be appropriate, but A.R.S. § 32-1401(26)(a) would be for an advisory letter under A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. Dr. Goldfarb would not support dismissal.

**VOTE: 4-yay, 7-nay, 0-abstain/recuse, 1-absent**

**MOTION FAILED.**

**MOTION: Ram Krishna, M.D. moved advisory letter for failure to maintain OSHA standards in his office as he has already taken remedial action to correct the deviation. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.**

**SECONDED: Robert P. Goldfarb, M.D.**

**VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent**

| NO. | CASE NO.    | COMPLAINANT v PHYSICIAN |                      | LIC. # | BOARD RESOLUTION   |
|-----|-------------|-------------------------|----------------------|--------|--|
| 9.  | MD-03-0723A | L.T.                    | KIM D. JOHNSON, M.D. | 19257  | Advisory Letter for failure to reconfirm the current policy on vaccine administration and arrange for appropriate patient care. A.R.S. § 32-1401(3)(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action. |

L.T. made a statement to the Board at the call to the public. L.T. stated that doctor patient relationships should be sacred with a high level of trust. He was a patient of Dr. Johnson's for almost seven years and developed that trust. He was treated for rabies in July of 2003. He stated that he spent the night at the hospital, but was informed to see his regular physician. He tried numerous times to contact his physician, but Dr. Johnson would not return his calls. Dr. Johnson's nurse called him and informed him that he needed to go the County for help. L.T. stated that he had no communication from Dr. Johnson and no sense of direction. The only communication he received was about a week later stating that he could no longer be his physician. Another physician welcomed him and treated him properly. L.T. does not want this to happen to anyone else. There is a high ignorance factor with rabies and most physicians do not know how to treat rabies.

Dr. Krishna confirmed with Dr. Kirschner that physicians in general do not carry the vaccine for rabies. Dr. Kirschner stated a miscommunication occurred. Dr. Connell stated that he has had experience with the rabies vaccine. Most health plans will not pay for it because of the cost. Most providers would not even consider getting hold of it. He has had several instances where the patients needed it, but there are only a few places in Maricopa County to obtain it. Dr. Connell would support dismissal. Dr. Hunter was concerned that this physician did not even try to help this patient one way or the other. Dr. Krishna stated that Dr. Johnson did communicate to his patient through his office staff. Dr. Hunter stated that the patient asked to speak with the physician and the physician did not respond.

**RECOMMENDATION FOR NON-DISCIPLINARY ACTION (Continued) - KIM D. JOHNSON, M.D.**

**MOTION:** Tim B. Hunter, M.D. moved to issue an advisory letter for failure to reconfirm the current policy on vaccine administration and arrange for appropriate patient care. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

**SECONDED:** Sharon Megdal, Ph.D.

**VOTE:** 5-yay, 5-nay, 1-abstain/recuse, 1-absent

**MOTION FAILED.**

Dr. Goldfarb stated that was a communications problem with the patient. Dr. Goldfarb stated that he would support an advisory letter for poor communication.

**MOTION:** Tim B. Hunter, M.D. moved to dismiss this case.

**SECONDED:** Ram Krishna, M.D.

**VOTE:** 9-yay, 2-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

| NO. | CASE NO.                   | COMPLAINANT v PHYSICIAN  | LIC. #         | BOARD RESOLUTION |
|-----|----------------------------|--|----------------|------------------|
| 10. | MD-03-0746A<br>MD-03-0746B | J.R. ALBERT E. CARLOTTI, III, M.D.<br>MICHELLE, L. CABRET-CARLOTTI, M.D. | 29728<br>30196 | Dismissed.       |

Michelle L. Cabret-Carlotti, M.D. made a statement Board at the call to the public. Dr. Cabret-Carlotti respectfully requested that the Board reconsider an advisory letter. J.R. clearly understood that any photographs taken of her would be used as a training tool. J.R. never contacted Dr. Cabret-Carlotti to work out the situation. J.R. is seeking only financial gain. Dr. Cabret-Carlotti pleaded for the Board to dismiss this case. J.R. gave multiple and clear consents. Dr. Cabret-Carlotti also noted that the complaint was not filed until after she chose not to hire J.R. to work at her office.

Albert E. Carlotti, III, M.D. made a statement to the Board at the call to the public. Dr. Carlotti stated that he and his wife practice together and moved here to create an ideal environment to provide services to their patients. He stated that consents are always obtained for the use of patient photographs used in advertisements, lectures and other venues. CBS contacted them to present innovative techniques and services. The CBS piece was not advertising and the photo used offered a brief image of a before and after brow surgery.

**MOTION:** Tim B. Hunter, M.D. moved to dismiss this case.

**SECONDED:** Becky Jordan

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

**NON-TIME SPECIFIC ITEMS (Continued)****Executive Director's Report**

Tim B. Hunter, M.D. commented that it seems the Board's caseload is increasing. Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, informed the Board members that as of July of 2003, Board staff began recording every piece of paper coming into the agency. This has resulted in an eighteen percent increase through February of 2004. There has been a thirty seven percent increase of cases received and a fifty nine percent increase in cases opened. Dr. Cassidy explained a discrepancy in numbers due to the fact that Licensing statistics are included, but will be separated from the reports at a later time to show more accurate numbers. The number of disciplinary actions taken last year compared to the current year to date is approximately the same. Dr. Cassidy stated that the number of cases older than one year is now at four percent. There are currently forty cases pending review by the Staff Investigational Review Committee (SIRC). Dr. Cassidy stated that the Attorney General's (AG) office has worked diligently to process cases in their possession and litigate the backlog. Stephen A. Wolf, Assistant Attorney General, informed the Board members that the AG's office would be presenting statistics at the Board's Off-Site meeting. Mr. Wolf informed the Board that the AG's Office currently has six cases older than 2003. Dr. Cassidy stated that tracking everything coming into the agency takes time and resources, but lets the Board know where the backlog is. Dr. Cassidy stated that Gary Oglesby, Chief Information Officer, has provided a program to check on the status of all cases live to the minute. He also stated that the agency has done an outstanding job of the quality and timeliness of the investigation process. Edward J. Schwager, M.D. stated there is an upward trend of open cases, but the percentages are staying the same, the numbers are rising and will continue to rise if the system does not change. Dr. Cassidy reiterated to Dr. Schwager that the numbers also reflect the licensing, which has inflated the numbers. Dr. Schwager would like the subject of the Board's processes added to the Off-Site agenda. Douglas D. Lee, M.D. stated that he would like a national benchmark of where the Board stands. Sandra Waitt, Management Analyst, stated that every Board processes and adjudicates their cases differently, but she will look into this possibility and provide a report for the Board members. Dr. Cassidy stated that the process is working.

## **NON-TIME SPECIFIC ITEMS (Continued)**

### **Off-Site Meeting Agenda**

The Board members expressed the items they would like to discuss at the Off-Site meeting.

- Fines
- General Topics
- Agency Process
- Materials provided to the Board members for case review
- Alternative methods of chemical dependency treatment
- Discipline
- Judiciary Overview to be presented by Christine Cassetta, Board Counsel

### **Legal Advisor Report**

#### **Agency Response to Audit Report**

**MOTION:** Edward Schwager, M.D. moved to go into executive session at 3:26 p.m.

**SECONDED:** Robert P. Goldfarb, M.D.

**VOTE:** 11-yay, 0-nay, 0-abstain/recuse, 1-absent

**MOTION PASSED.**

The Board returned to open session at 3:34 p.m.

**MOTION:** Sharon Megdal, Ph.D. moved to discuss the legal opinion discussed in executive session.

**SECONDED:** Tim B. Hunter, M.D.

**VOTE:** 7-yay, 1-nay, 0-abstain/recuse, 4-absent (William R. Martin III, M.D., Douglas D. Lee, M.D., and Patrick N. Connell, M.D. were not present for this vote)

**MOTION PASSED.**

Sharon B. Megdal, Ph.D. stated that the Board's audit response to the manual in question should be corrected with the Auditor General's office because this was an inadvertent technical error. Ram R. Krishna, M.D. agreed and stated that this error has been corrected by the agency and needs to be reported. Tim B. Hunter, M.D. agreed with Dr. Megdal and Dr. Krishna. Dr. Megdal suggested that a letter be drafted that would explain what happened to ensure they are aware the Board is not trying to hide anything. Dona Pardo, Ph.D., R.N. agreed with Drs. Megdal, Hunter and Krishna.

**MOTION:** Tim B. Hunter, M.D. moved to instruct the Executive Director to work with Board Counsel in drafting a letter to correct this error with the Auditor General.

**SECONDED:** Sharon Megdal, Ph.D.

**VOTE:** 10-yay, 0-nay, 0-abstain/recuse, 2-absent (Douglas D. Lee, M.D. was not present for this vote)

**MOTION PASSED.**

### **Approval of Minutes**

**March 10, 2004 Teleconference Minutes**

**March 26, 2004 Emergency Summary Action Teleconference Minutes**

Dona Pardo, Ph.D., R.N. verified that she submitted corrections for the minutes via e-mail.

**MOTION:** Ram Krishna, M.D. moved to accept the March 10, 2004 Teleconference Minutes and March 26, 2004 Emergency Summary Action Teleconference Minutes.

**SECONDED:** Dona Pardo, Ph.D., R.N.

**VOTE:** 10-yay, 0-nay, 0-abstain/recuse, 2-absent

**MOTION PASSED.**

Meeting adjourned at 3:59 p.m.

[Seal]

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Barry A. Cassidy, Ph.D., P.A.-C, Executive Director